

INTERNET GAMBLING

HEARING

BEFORE THE

SUBCOMMITTEE ON TECHNOLOGY, TERRORISM,
AND GOVERNMENT INFORMATION

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

ISSUES RELATING TO INTERNET GAMBLING INCLUDING YOUTH GAMBLERS, ADDICTION, BANKRUPTCY, UNFAIR PAYOUT, CRIME, THE WIRE ACT, AND THE PROPOSED INTERNET GAMBLING PROHIBITION ACT

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CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

	Page
Kyl, Hon. Jon, U.S. Senator from the State of Arizona	1
Feinstein, Hon. Dianne, U.S. Senator from the State of California	3
DeWine, Hon. Mike, U.S. Senator from the State of Ohio	4

CHRONOLOGICAL LIST OF WITNESSES

Panel consisting of James E. Doyle, attorney general, State of Wisconsin, Madison, WI; Betty Montgomery, attorney general, State of Ohio, Columbus, OH, on behalf of the National Association of Attorneys General; and James R. Hurley, chairman, New Jersey Casino Control Commission, Atlantic City, NJ	6
Panel consisting of Jeffrey Pash, executive vice president, National Football League, New York, NY; Bill Saum, director of agent and gambling activities, National Collegiate Athletic Association, Overland Park, KS; and Marianne McGettigan, counsel, Major League Baseball Players Association, Portland, ME	22

ALPHABETICAL LIST AND MATERIAL SUBMITTED

Doyle, James E.:	
Testimony	6
Prepared statement	8
Hurley, James R.:	
Testimony	12
Prepared statement	15
Kyl, Hon. Jon:	
Letter to Senator Kyl from Commercial Internet Exchange Association, United States Telephone Association, America Online, and USWest, dated Mar. 23, 1999	64
Prepared statement of Ralph Sims on behalf of the Commercial Internet Exchange Association	64
Letter to Senator Kyl from James J. Hickey, Jr., president, American Horse Council, dated Mar. 22, 1999	67
McGettigan, Marianne:	
Testimony	57
Prepared statement	60
Montgomery, Betty: Testimony	9
Pash, Jeffrey:	
Testimony	22
Prepared statement	24
Exhibit A-E: Various articles	27
Saum, Bill:	
Testimony	54
Prepared statement	56

INTERNET GAMBLING

TUESDAY, MARCH 23, 1999

U.S. SENATE,
SUBCOMMITTEE ON TECHNOLOGY, TERRORISM,
AND GOVERNMENT INFORMATION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:03 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Jon Kyl (chairman of the subcommittee) presiding.

Also present: Senators DeWine, and Feinstein.

OPENING STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator KYL. The hearing before the Senate Committee on the Judiciary Subcommittee on Technology, Terrorism, and Government Information will come to order. This is a hearing on Internet gambling. I am Senator Jon Kyl, chairman of the subcommittee, and this is Senator Dianne Feinstein, the ranking Democrat on the subcommittee, and we welcome all of you to the subcommittee this morning.

Good morning, Dianne.

Senator FEINSTEIN. Good morning, Jon.

Senator KYL. Let me begin by making a brief opening statement, call on Senator Feinstein, and then we will roll the video. I think that also Senator DeWine will be joining us in just a little bit.

As I suspect we all are well aware, societies throughout history have sought to prohibit most forms of gambling. There are many reasons for this, but they are, I think, especially applicable to Internet gambling today. Let me begin by commenting on a couple of recent stories.

The New York Times recently had an article that warned that "Internet sports betting entices youthful gamblers into potentially costly losses." And in this article, Kevin O'Neill, who is Deputy Director of the Council on Compulsive Gambling in New Jersey, said, "Internet sports gambling appeals to college-age people who don't have immediate access to a neighborhood bookie * * * it's on the Net and kids think it's credible, which is scary."

It is very likely to be a big part of the underground economy. Ted Koppel noted in a "Nightline" feature on Internet gambling, "Last year, 1,333,000 American consumers filed for bankruptcy, thereby eliminating about \$40 billion in personal debt. That's of some relevance to all of us because the \$40 billion in debt doesn't just disappear. It's redistributed among the rest of us in the form of in-

creased prices on consumer goods.” And he continued, “If anything promises to increase the level of personal debt in this country, expanding access to gambling should do it.”

And we do know that—and there are some new studies that talk about the addictive nature of gambling, particularly gambling on the Internet. It enhances the addictive nature of gambling because it is so easy to do. You don’t have to travel anywhere to do it; you can just log on to your own computer.

Prof. John Kindt has described electronic gambling like the type being offered in these virtual casinos as, “the hardcore cocaine of gambling.” And William Bible, who is the chair of the Internet Gambling Subcommittee on the National Gambling Impact Study Commission, wrote in the ABA Journal that “anyone who gambles over the Internet is making a sucker bet.”

We also know that this has an impact on crime. Gambling on the Internet is apt to lead to criminal behavior. Indeed, up to 90 percent of pathological gamblers commit crimes to pay off their wagering debts, according to testimony before this committee in 1997.

And with respect to cost, again, according to this March ABA Journal article, online wagering is generating a \$600 million a year kitty, and some analysts say it could reach as high as \$100 billion by the year 2006. We are talking about something that is very, very big here. The article concludes, “The number of Web sites offering Internet gambling is growing at a similar rate. In just one year, that number more than quadrupled, going from about 60 in late 1997 to now more than 260 according to some estimates.”

Now, a lot of times problems that are national aren’t necessarily Federal. But this is a case where this national problem is a Federal problem, which is why the State attorneys general have come before us and are before us again today. The Internet, of course, is interstate in nature, and States cannot protect their citizens, enforcing their own laws from Internet gambling, if anyone can transmit into their States. And that is why they have asked us for Federal legislation and Federal enforcement.

Now, the current law, as many of you know, is the 1991 Wire Act, which prohibits using telephone facilities to receive bets or send gambling information. But as this ABA Journal article pointed out that I quoted before, the problem with the current Federal law is that the communications technology it specifies is dated and limited. And that is why this Subcommittee on Technology, which in so many other areas has tried to bring the law up to date with evolving technology, began looking at this particular problem. The advent of the Internet, a communications medium not envisaged by the Wire Act, requires enactment of a new law to address activities in cyberspace, again, not contemplated by the drafters of the older law.

So the bill that we introduced and which passed the Senate, 90 to 10, last year and which, with certain modifications, we have re-introduced, bans gambling on the Internet, just as the Wire Act prohibited gambling over the wires. And it does not limit the subject to gambling sports. In sum, the Internet Gambling Prohibition Act brings Federal law up to date.

With the advent of new, sophisticated technology, the Wire Act is becoming outdated, as I said, and the Internet Gambling Prohibi-

tion Act corrects that problem. In short, it ensures that the law keeps pace with technology. We are going to be introducing our 1999 version of the bill very soon, perhaps today, and plan to hold a subcommittee markup in April if all goes well.

So, that is the brief introductory statement that I would like to make here, and let me now call on Senator Feinstein for any comments that she would have.

**STATEMENT OF HON. DIANNNE FEINSTEIN, A U.S. SENATOR
FROM THE STATE OF CALIFORNIA**

Senator FEINSTEIN. Thank you very much, Mr. Chairman, and I certainly agree with your comments and I want to welcome the witnesses here this morning. I think all of us have been surprised at how fast the Internet has blossomed, and with that blossoming comes a great deal of potential and a number of challenges.

I know there is a rush, in a sense, to regulate, but I think we should first ask ourselves several questions, and among them and most prominent is this. Are current laws adequate to address the conduct already? Would the transaction be illegal if it took place over the telephone lines or by mail? And does the Internet present some threat that is distinct from these more established means of communication? I believe that when it comes to gambling via the Internet, these questions are answered in favor of this legislation.

Gambling is heavily regulated in most States. Utah and Hawaii, for example, outlaw gambling altogether. Interstate wagering over wires is already a violation of Federal law. However, many believe that this existing Federal law would not necessarily apply to Internet gambling. For instance, the Internet could be accessed through microwave signals rather than over a wire. Thus, conduct that would be illegal if conducted over the phone is able to escape punishment when conducted via the Internet. In effect, the Internet creates a loophole in existing law.

Gambling over the Internet is undergoing rapid growth. The Justice Department recently estimated that \$600 million was bet illegally over the Internet on sports alone in 1997. This already undermines the severe restrictions against gambling which the major athletic leagues take so seriously, as illustrated, I think, well by the case of Pete Rose, a sure-fire first-ballot entry into the Hall of Fame who apparently is forever barred from its doors because he bet on baseball.

We already have seen the effects that sports gambling has. College athletes from Northwestern University to Arizona University have been convicted of shaving points in their games. If the Internet permits sports gambling to dramatically escalate, as apparently is happening, the threat to the integrity of our athletic events will also escalate accordingly. But we must be careful in how we go about remedying the problem. There are legitimate businesses across the country which rely on legal gambling.

Horse racing, for example, is supported by gambling which has been legalized and regulated by most States in the country. Horse racing has a \$3 billion impact on California's economy each year, nearly triple that of any other professional sport, surprisingly, and more than 30,000 Californians depend directly on the horse racing industry to support their families.

So we must be careful that we don't inadvertently disrupt legal businesses on which so many people rely for their livelihood. In that regard, Mr. Chairman, I have appreciated your efforts to work with me to carefully address these concerns in this legislation.

We must also be careful not to slow down the Internet or place unreasonable burdens on legitimate Internet-related businesses. The Internet and the businesses which are involved in or related to it have been the engine of dynamic economic growth, contributing greatly to the economic prosperity which we now enjoy.

Revenue for online merchants in North America was \$4.4 billion in just the first 6 months of 1998. Nearly 16 million Americans were buying online in just the last 90 days alone. Forester Research predicts that worldwide Internet commerce could reach as high as \$3.2 trillion in 2003. Already, Americans spent \$643 billion on information and computer technology in 1997.

So the Internet has great potential for even significantly greater growth, with its dynamic interactivity and rapid delivery of electronic products. For the Internet to reach its full potential, however, it and the computer which people to access it must be even faster so that switching from one multimedia web site to another takes no longer than changing the channel on our television sets.

We must be careful not to impose requirements which slow down Internet functions or which place unreasonable burdens on Internet-related businesses which create such robust economic activity. I believe we can do this, Mr. Chairman, and I look forward to discussing these issues with our witnesses today and to working closely with you, as we do so often, in addressing these issues and passing this legislation.

Senator KYL. Thank you very much, Senator Feinstein.

We are now joined by Senator Mike DeWine. Senator DeWine, in addition to making any opening comments, could I call upon you to introduce one of our opening panelists, your State attorney general, please, and then I will introduce the others.

**STATEMENT OF HON. MIKE DeWINE, A U.S. SENATOR FROM
THE STATE OF OHIO**

Senator DEWINE. I would be delighted to, Mr. Chairman. Thank you very much. I just want to thank you, Mr. Chairman, for holding this very important hearing on Internet gambling.

The global nature of the Internet confronts our States with really a number of challenges, not the least of which is policing gambling on the Internet. Many of our States are now wrestling with the thorny law enforcement and consumer problems surrounding interstate Internet gambling. Mr. Chairman, you have been a leader for some time on this whole issue, and I really appreciate your continued work and your tenacity in dealing with this problem.

I would like to take a moment to welcome my friend and the Attorney General of the State of Ohio, Betty Montgomery, who is appearing in front of our committee today on behalf of the National Association of Attorneys General. Attorney General Montgomery and I have worked together for a number of years on many law enforcement issues in Ohio.

Betty, we just welcome you here and we are delighted that you have taken the time to testify this morning. We look forward to your testimony.

Mr. Chairman, I believe that Attorney General Montgomery's law enforcement perspective is going to be particularly valuable for us this morning, stemming from her work with the National Association of Attorneys General Working Group on Internet Gambling. This will be helpful to our consideration of this issue and I certainly look forward to hearing her testimony.

Thank you, Mr. Chairman.

Senator KYL. Thank you, Senator DeWine, and I welcome Attorney General Montgomery. I also want to introduce Attorney General James Doyle. I know that Senator Kohl was going to try to be here this morning, and hopefully he will join us. And he could give you a much better introduction than I can, but let me tell you, as a Republican introducing a Democrat attorney general here, there isn't anybody that has been more of an educator to me and more helpful in pursuing this matter than Attorney General Jim Doyle, who has acted as head of the National Association of Attorneys General, has really helped to educate other members of the Attorney Generals Association on this, whose staff has been of immense help to my staff, and who has worked with us with each different draft.

We have had a lot of different iterations of our legislation through the last year when it passed 90 to 10, and then in working with other groups this year trying to see that they could be comfortable with what we are doing. And we have made some modifications to meet some of their objectives. And I can't say enough about Attorney General James Doyle and the support that he has given to us in this legislation and the way that he has been a real leader in the area.

So, Jim, I am very happy to have you testifying again for us.

And we have another panelist here who hasn't testified before our panel before, but we are very happy to welcome Mr. James Hurley, who is the Chairman of the New Jersey Casino Control Commission, Atlantic City, NJ.

You will bring a very useful perspective to us with respect to this legislation and I welcome you as well, Mr. Hurley.

Now, I didn't ask you which order to go in—oh, we are going to roll some video before we start, and maybe I could ask our technical people here to go ahead with that. Roll the tape.

[Videotape shown.]

Senator KYL. Well, that was Jim Lampley in a special interview for HBO which ran, I think, about a month ago. I hope you enjoyed it.

Let's begin with Attorney General James Doyle, and then we will just move down the table this way.

Again, General Doyle, thank you very much for everything you have done in the past and for being with us here today.

PANEL CONSISTING OF JAMES E. DOYLE, ATTORNEY GENERAL, STATE OF WISCONSIN, MADISON, WI; BETTY MONTGOMERY, ATTORNEY GENERAL, STATE OF OHIO, COLUMBUS, OH, ON BEHALF OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL; AND JAMES R. HURLEY, CHAIRMAN, NEW JERSEY CASINO CONTROL COMMISSION, ATLANTIC CITY, NJ

STATEMENT OF JAMES E. DOYLE

Mr. DOYLE. Well, Mr. Chairman, Senator Feinstein, Senator DeWine, thank you for giving us this opportunity. Senator Kyl, I want to thank you as well and your staff who have been extraordinarily responsive to the attorneys general from around the country. And you have been the leader on this issue and we have been proud to be working with you.

As you know, I have long supported this legislation, and I hope this is the year that you will be successful in seeing it become the law of the United States. It was about 3 years ago that the National Association of Attorneys General took the step that many of us never imagined. The organization recommended an expansion of the Federal Government's traditional law enforcement role.

If you sit around one of our meetings, normally we are complaining about how the Federal Government is always trying to take another crime away from the State and put it on the Federal side of things. But this was a case where we strongly supported Federal action.

And since that initial recommendation, as you know through your work, a lot has changed. The Internet has continued to grow faster. Gambling is more available than it was 3 years ago. The kind of stories that were detailed there are becoming more and more common.

The reason the State attorneys general took this action was that we recognized the limitations of traditional concepts of State jurisdiction when it comes to regulating and controlling gambling on the Internet. Although the overwhelming majority of Internet traffic occurs within the United States, the Internet is global and any single State or even any combination of our States working together can only have a limited effect in controlling the myriad of activities occurring in that medium.

Gambling laws and regulations have more State-to-State variation than almost any other area of the law. There probably is no other area that so reflects the different cultural values and concerns of the various States in this country. Each State's gambling policy is carefully crafted to meet its own moral, law enforcement, consumer protection, and revenue concerns.

Most States believe that they have the correct combination of law and policy to address the needs of their citizens. The Internet threatens to disrupt those laws and policies, and Federal action on Internet gambling is necessary in order to preserve each State's ability to direct its own gambling policies. This is not an instance in which we are asking the Federal Government to take over an area that we seek to control within our own States. This is an area where we are asking the Federal Government through this bill to, in fact, protect the States in their ability to decide their own gambling policy within their own States.

The technology of the Internet simply cannot meet the needs of effective gambling regulation. Gambling laws must address a wide variety of specific issues in order to meet these policy concerns. Some of the most crucial issues include game integrity; dispute resolution; underage gambling, which again is something that you, Senator, mentioned as a growing problem; problem and compulsive gambling; effective means to verify the physical location of the players and proprietors. And as we just saw in the show there, Aruba turned out to be a house in Pennsylvania. Internet technology is currently unable to adequately address all of these policy considerations.

Many have argued, and undoubtedly will argue again today that the Government cannot effectively prohibit gambling on the Internet. Instead, they argue that the Government should attempt to regulate gambling rather than prohibit it. Let's be clear about what they are really asking.

They are asking for a national policy permitting gambling, with a national Federal regulatory scheme for regulating gambling. That is the request that is being made as far as regulating Internet gambling. We don't want gambling in Wisconsin. We don't want a federally regulated system of gambling in Wisconsin. We want to make our own choice about what kind of gambling is going to be permitted in the State.

In addition, the argument, I think, turns on its own head. The fact that it is difficult to flat out prohibit Internet gambling also demonstrates that it is impossible, I believe, to have any effective regulation as well. The difficulty of prohibition does not provide a reason to legalize the activity, which is opposed by the great majority of people in the United States.

I have no illusions about the U.S. Government's choice here that it will change the behavior of all the jurisdictions around the world. However, I do believe that a strong statement in favor of prohibition will raise the necessary red flags for citizens all over the world, and certainly all over this country, who might fall prey to unscrupulous gambling organizations.

In particular, U.S. citizens should be able to understand clearly that the Government does not support or condone this activity. They should also know that they will not be able to turn to the Government for help when they lose their money to an unknown operator on the other end of a wire or when their financial information is used in a way that harms them.

If this Government were to choose to regulate this activity, it is clear that the regulation would not be effective. There are simply too many work-arounds and too much anonymity programmed into the infrastructure of today's Internet for any regulator to vouch for the security and identity of a Web gambling operator.

In addition, there is no way to regulate the person who is placing the bet. Unlike an actual physical casino where you can see the people who are going in, there is no way to regulate or to make sure that the person who is using the computer and gambling is of appropriate legal age, that they are not a compulsive gambler. There is no way to cut them off after significant losses. There is no way to put into place the kinds of protections from money laun-

dering that exists in legalized gambling operations in the United States.

Senator Kyl and Senator Feinstein, you have indicated some of the problems in the current Wire Communications Act. It was a good attempt that was not designed to be directed at Internet gambling. That law needs to be modernized; it needs to be updated, and it needs to make clear that Internet gambling is illegal in this country. That then permits each State to make its own decision about what its gambling policy will be.

As the National Association of Attorneys General, we fully support your bill, Senator Kyl. We look forward to working with this committee and, as I say, I hope this is the year we are finally going to see it enacted into law.

Thank you.

Senator KYL. Thank you, Attorney General Doyle.

[The prepared statement of Mr. Doyle follows:]

PREPARED STATEMENT OF JAMES E. DOYLE

Thank you for inviting me to speak to the subcommittee regarding the Internet Gambling Prohibition Act. I have long been a supporter of this legislation, and am eager to do all that is necessary to assure its enactment into law.

Almost three years ago, the National Association of Attorneys General took a step many of us never imagined: The organization recommended an expansion of the federal government's traditional law enforcement role. Specifically, we urged the federal government to enact legislation to prohibit gambling on the Internet. Since that initial recommendation, a lot has changed. The Internet has continued to grow faster, the technology of home computers has improved dramatically, millions of users have begun "surfing the net," and the Internet gambling industry has grown immensely as well.

The reason the Attorneys General took this action was that state law enforcement officials recognize the limitations of traditional concepts of state jurisdiction when it comes to regulating and controlling gambling on the Internet. Although the overwhelming majority of Internet traffic occurs within the United States, the Internet is global in scope, and any single state, or even a group of states working together, can have only a limited effect in controlling the myriad of activities occurring in that medium.

Gambling laws and regulations have more state to state variation than almost any other area of law. Each state's gambling policy is carefully crafted to meet its own moral, law enforcement, consumer protection and revenue concerns. Most states believe they have the correct combination of law and policy to address the needs of their citizens. The Internet threatens to disrupt those laws and policies. Federal action on Internet gambling is necessary in order to preserve each state's ability to direct its own gambling policy.

The technology of the Internet simply cannot meet the needs of effective gambling regulation. Gambling laws must address a wide variety of specific issues in order to meet these policy concerns. Some of the most crucial issues include game integrity, dispute resolution, underage gambling, problem gambling, and effective means to verify the physical location of players and proprietors. Internet technology is currently unable to adequately address all of these policy considerations.

Many have argued, and undoubtedly will argue again today, that the government cannot effectively prohibit gambling on the Internet. Instead, they argue, this government should attempt to regulate that which it cannot prohibit. However, this argument turns against itself, because it is quite clear that an activity which could not be effectively prohibited is also not subject to effective regulation. The fact that Internet Gambling is difficult to control does not mean that law enforcement should bury its head in the sand and pretend the problem does not exist. Nor does that difficulty provide a reason by the majority of the U.S. population.

I have no illusions that the United States' policy choice in this matter will not, in itself, change the behavior of every jurisdiction around the world. However, I do believe that a strong statement in favor of prohibition will raise the necessary red flags for citizens all over the world who might fall prey to unscrupulous gambling operators trolling the information highway for likely victims. In particular, U.S. citizens should be able to understand clearly that the government does not support or

condone this activity. They also should know that they will not be able to turn to the government for help when they lose their money to an unknown operator on the other end of the wire, or when their financial information is used in a way that harms them.

If this government were to choose to regulate this activity, it is clear that the regulation could not be effective. There are simply too many workarounds and too much anonymity programmed into the infrastructure of today's Internet for any regulator to be able to vouch for the security and identity of a web gambling operator. Even if game integrity and operator identity could be confirmed, there is currently no infrastructure available for customers to be assured that they are dealing with an individual operator who is covered by that regulation. This is just one small example of the difficulties gambling regulation would face on the Internet. Any "Seal of Approval" transmitted over the Internet would not be worth the paper it was printed on.

The Wire Communications Act, 18 § U.S.C. § 1084, is currently the only federal law which directly addresses any aspect of gambling on the Internet. The Wire Act was enacted in the early 1960's primarily to prohibit interstate transmission of sports and race bets via the telephones and telegraph wires. The Act, however, contains major limitations which need to be addressed in the age of the Internet.

One of the most critical limitations of the Wire Act is the scope of the gambling activity covered. There is, to many, an ambiguity regarding the types of gambling covered by the Act. Because of the context of the time it was passed, some believe it is limited solely to sports and race wagering. While these may be the only types of the multimedia transmissions suitable for depicting all forms of casino gambling. It is a new world, and we must be certain that these new games are addressed as effectively as traditional gambling was under the Wire Act.

This Senate's action on Senator Kyl's bill begins a process in which the United States' government can make a strong policy statement that gambling via the Internet is not a good bet for its citizens. I urge this subcommittee to support this bill.

Senator KYL. Attorney General Montgomery.

STATEMENT OF BETTY MONTGOMERY

Ms. MONTGOMERY. Mr. Chairman, Senators Feinstein and DeWine, thank you so much for inviting us here today. Having been not only a legislator in Ohio, as well as an elected county prosecutor and a career prosecutor, it is a pleasure to speak today on this very important subject.

General Doyle has handled this very well. The Internet has, in fact, changed our world for the better and also for the worse, and it is quite obvious by looking at what we are looking at right now. The convenience that allows for instant international training, as Senator Feinstein has referred to, and communication, also allows individuals to gamble away their life savings and their family's life savings in the click of a mouse. It all feels just like a video game. It seems it would be very easy for the young or the naive who do not fully grasp that those little numbers appearing on their computer screen are real dollars—they are not Monopoly dollars—going down the cyber drain.

For generations, most communities in the United States have not allowed most forms of gambling, as General Doyle has indicated and as you have, Mr. Chairman. The average citizen, I believe, is aware that because of the advances in the Internet, there are some serious problems with access into their own community and their home. And it is unprecedented the amount of gambling that is going on virtually unregulated.

The scariest thing about it is that it doesn't take much sophistication to gamble on the Internet, and I will show you in a moment how easy it is. You have seen on the video that Senator Kyl has shown you it takes no time and even less effort to be able to

do this. Gambling has been primarily regulated by States. That is not by accident. It is because, as General Doyle has indicated, each of our States has a different set of problems, a different set of cultures, a different sense of what is appropriate and inappropriate in terms of legalized gambling or moral behavior.

Each of the State's gambling laws have been carefully crafted to reflect its own public policy concerns. On Ohio, most forms of gambling are prohibited. Exceptions have been made for the State lottery, horse racing, and some types of gambling activities conducted by nonprofit charitable organizations. Most State lawmakers and law enforcement officials, including Ohio's, believe that the right combination of law and policy address their population's moral, law enforcement, consumer protection, and revenue needs.

But the Internet is a threat to the traditional independence of State law enforcement, and I am again repeating what General Doyle has said in saying it is with your help that we can protect each of our State's individual rights to control our own individual State laws, and it is with your help that we can join hands to have that happen.

Let me share with you what we have been able to retrieve by simply logging on the Internet and by typing the words "Internet gambling." By using the search engine Alta Vista, we hit 690 references. These interactive sites allow individuals to play games as if he or she were inside a casino. Audio available while visiting or playing these sites allows individuals to hear the wheels turn, to hear the machines ring, to hear the chips fall and the dollars fall, to actually be in a virtual casino.

To create one of these sites, individuals need about \$100,000 to purchase an Internet gambling software package, a computer, and a telephone line. No permanent real estate location is necessary. Individuals from Alabama can generate capital in Switzerland, run their business from Ohio, but have their computer software located and licensed in Antigua and conduct their business throughout the world.

According to VIP Sports, a popular Netherlands Antilles online gambling site, the gambling industry will generate more than \$2.3 billion by the year 2001. VIP Sports also reported a 2,000-percent growth, and this is because of Internet gambling.

Let me just show you a few sites. Copies of these web sites are included in your packet. If you take a look at one, the first site shows the worldwide reach of Internet gambling. It allows consumers from anywhere on the globe to gamble with their currency of choice all with just the click of a mouse.

Next, the second site invites consumers to "play for free," but there is nothing free about gambling on the Internet. It is not Monopoly money consumers are losing; it is their hard-earned wages.

The third site offers games of chance that are available in any Atlantic City casino, only this isn't Atlantic City. No plane ticket is needed, as Senator Kyl has indicated. Consumers can play poker, black jack, roulette, without ever leaving the convenience of their homes and their computers.

And, finally, just like Las Vegas tourists head for the slot machines with buckets of change, a one-arm bandit in cyberspace beckons them on the Net. This site provides all real-world action

of slot machines—change tumbling into slots, levers' downward motion, windows spinning around, matching symbols, and lights flashing with instructions.

That is why, Senator Kyl, the Internet defies traditional concepts of jurisdiction and geographic boundaries. And it is a global medium and therefore intrinsically interstate in its reach. We understand the law enforcement resources of Ohio or Wisconsin or any of the States, even well-coordinated, cannot get to the reach that the Internet has. That is why, Senator Kyl, your legislation is so needed.

Furthermore, technology alone cannot address the requirements of effective gambling regulation. Gambling is already one of the most heavily regulated industries in the world. Yet, the Internet is one of the most unregulated and inherently difficult phenomena to regulate in modern times, and it is all just a click of a mouse away.

Regulation in the traditional gambling industry has important parameters. And, Senators, I know that General Doyle alluded to it, but the integrity of the gambling system itself, background checks of proprietors, resolution of consumer disputes, verification, importantly for us, for the age of the players, all are things that we can't get to at the State level.

The qualities that make the Internet such a powerful force, as Senator Feinstein has referred to, is also the thing that has caused our State regulators to frankly have a very difficult time in trying to regulate under Ohio's gambling laws or Wisconsin's gambling laws. For these reasons, NAAG has for several years supported Federal intervention. The industry has grown immensely. A few years ago, there were dozens of web sites and now, as Senator Kyl has indicated, there are hundreds of web sites.

We continue to support, Senator Kyl, your courageous work in this area. We know, frankly, any of us who have dealt with gambling, both as a local prosecutor or as a State legislator, the pressures that come to bear with the amount of money involved and the powerful interests involved, economic as well as political interests involved.

I know personally how difficult this is going to be for this Congress to pass. I can only sit here and say as one State-elected official to other statewide elected officials and national officials, it is critical that we act now because if we wait too much longer, it will be virtually impossible for us to be able to make those differences.

Thank you very much.

Senator KYL. Thank you very much, General Montgomery. Just before I call on Mr. Hurley, just let me say I think all of us could live quite comfortably on the money that just was spent last year and is likely to be spent this year lobbying against this legislation. That is why we had better do it now.

Commissioner Hurley, thank you very much for being with us today and we look forward to your testimony as well.

Incidentally, I took this down. This was supposed to be a useful tool to let you know when you are getting close to 5 minutes. We are not limiting your testimony. If you can keep it to 5 minutes, that is fine, but I didn't want you to feel intimidated by these lights.

STATEMENT OF JAMES R. HURLEY

Mr. HURLEY. Thank you, Mr. Chairman and Senators. I thank you for inviting me to appear before you today to discuss the regulation of casino gambling. My name is James Hurley. I am the Chairman of the New Jersey Casino Control Commission. The Commission is a five-member panel appointed by the governor, confirmed by the New Jersey State Senate, and we regulate New Jersey's \$4 billion casino industry.

I realize the topic for this subcommittee hearing is internet gambling, and one of the issues is whether Internet gambling can be effectively regulated. What I would like to do is to describe our system of controlling casino gambling and suggest that absent a strict licensing and regulatory system, there is no way to ensure the integrity of operators or games.

New Jersey developed a strict, comprehensive regulatory system back in 1977. It was designed to ensure the suppression of organized crime and that the casinos pay taxes on all the money they win. We believe it has worked very effectively to ensure not only that casinos are owned and operated by people of good character, honesty and integrity, but also that the public has confidence that the games are honestly run, fair, and their winning wagers will be paid.

To accomplish this level of public confidence, New Jersey implemented a licensing system that requires every owner, officer and director of a casino, as well as many of the officers, directors and owners of a holding company or intermediary company, to file an extensive license application. They had to disclose detailed information about any criminal record, business affairs, civil litigation, at least 5 years of personal income tax returns, and voluminous additional information. Applications for casino operation license generally fill several large transfer boxes.

A copy of that application is forwarded to the New Jersey Division of Gaming Enforcement, which is in the Department of Law and Public Safety, headed by the attorney general of New Jersey, which conducts a full investigation into the applicant and its qualifiers. The Gaming Division looks at criminal histories, bank records, civil litigation, tax returns, SEC filings, and anything else that it feels would be pertinent to determine whether a company or a person has the required good character, honesty and integrity. It even looks at newspaper articles to determine not only the fact of an applicant's good character, but also the applicant's reputation for good character.

The results of that application and that investigation are put into a report that is submitted to our commission. We then schedule a public hearing into the application, during which witnesses are examined and cross-examined, documents are reviewed and placed into evidence, and attorneys make opening and closing statements and argue points of law.

At the end of that process, we then vote on whether the applicant has met its burden to prove by clear and convincing evidence that it has the required character, honesty and integrity to hold a license. The process is almost identical for every key casino employee who works in the New Jersey gaming industry. They file lengthy

disclosure statements. This, by the way, is an application for a casino qualifier. It is 60 pages long.

They submit these disclosure statements for rigorous investigation and, if necessary, undergo a full hearing before a commissioner to determine suitability. Through this process, we can, and we have, prevented organized crime and other unsavory individuals from owning or operating a casino in Atlantic City. But frankly we want to tell you and emphasize that we don't stop there. We know that there are other ways for organized crime to infiltrate, influence or control the casino industry.

As a result, we subject anyone who sells a product or a service to a casino hotel to licensing requirements. Before a vendor can sell a slot machine, a deck of cards, or a pair of dice to a casino, that company has to file a casino service industry license application. The officers, directors and owners of that company have to be identified and investigated to determine whether the seller is qualified for license. While the company can start selling prior to the issuance of a license, every single transaction has to be scrutinized and approved in advance by our commission.

Anyone who wants to sell nongaming products or services to a casino—soap or towels or food—also could face licensing requirements. If a company does regular and continuing business, which is defined in our regulations by certain monetary thresholds, it also has to file a license application and undergo a background check. Even if the vendor never meets that threshold, if the Division of Gaming Enforcement discovers information that the vendor is unsavory, we can order casinos not to deal with that vendor.

And I will give you one example, a wholesale seafood firm in New Jersey supplying casinos. The Gaming Division learned that one of its sales representatives was the head of a Philadelphia-based organized crime family. Even when the seafood firm offered to have that sales representative handle only noncasino accounts, we indicated that was not sufficient and we ordered casinos not to deal with that firm. Through the licensing and registration of casino service industries, we have prevented organized crime and other unsavory elements from coming in the back door to influence casino operations.

Let me move quickly to a second prong of our system. That is the oversight and control of casino operations. Regulations on internal and accounting controls, gaming equipment, and on the operation of the games ensure effective control and fair gaming for the public. Every casino operates under a strict set of regulations and internal controls that spell out in great detail how gaming operations are to be conducted. The rules of the games are detailed in our regulations, as is the basic organizational structure for the casino.

In addition, the casinos operate under the strict security of our inspectors who are on duty in those casinos around the clock. Every slot machine that an operator wants to use must be tested and approved in advance. Testing is done by the Division of Gaming Enforcement in a specialized electronic games laboratory in Atlantic City.

The Gaming Division makes certain not only that the machine pays back at least the minimum 83 percent, as required by law, but it pays back precisely what the manufacturer says the program

is designed to pay back. Once a slot machine program is approved, the computer chip containing the game is placed in the machine and sealed by the Gaming Division.

When large slot machine jackpots are won, \$35,000 or more, our inspectors secure the machine and Gaming Division agents test the computer chip to make certain that it has not been tampered with in any way. Cards are inspected when a game opens and cannot be used for more than a single day. Dice are checked when the crap table opens to make sure they are perfectly square and balanced. They, too, are only used for a single day. Roulette wheels are tested to make certain they are balanced and true. There are specific procedures that casinos must follow to make certain all cards are in the deck and to reduce the possibility of cheating and collusion.

All of this is done, very frankly, with a system of people watching people watching people. The actions of a dealer are watched by a floor person. Both of them are watched by a pit boss. Shift managers watch the pit bosses. And then there is an elaborate surveillance system that can monitor activities at every table and every slot machine, as well as anything that goes on in the count rooms or in the cashier's cage.

Our inspectors are on-site watching, as well as plain-clothes agents of the Division of Gaming Enforcement regularly are in those casinos. Both our inspectors and the Gaming Division also have complete access to the surveillance system from our own offices. Under every slot machine is a compartment where the winnings fall, but to open that compartment there are two locks and the casino only has a key to one of them. We have the other one. The same with the drop boxes; two keys are needed to open them. That means our inspector must be present when cash is collected from the slots and the tables.

The money is counted in secure count rooms. Once again, to get into the count room you need to open two locks. We control one, the casino controls the other. Our inspector is physically present when all of the currency is counted and when high denominations are counted. The counts are videotaped. The soft count where paper money is counted is even audiotaped. In either case, our inspector has to verify the count before the money can leave the room. This procedure allows us to verify the amount of the casino's tax liabilities.

We also require casinos to prevent underage persons from gambling. Every year, casinos escort more than 30,000 underage persons from casinos. Generally, fewer than 500 have actually been found gambling, but casinos know that we take this issue very seriously. If they fail to keep underage persons from the casino or from gambling, they are subject to complaints and we have imposed significant fines against them.

The list of controls goes on, and I know our time is limited, but it is difficult to adequately explain in words how this system works. Therefore, Mr. Chairman, I would like to invite you and the rest of your committee to visit Atlantic City and to see firsthand the protections that I have described today. I hope, though, that I have given you a flavor of the kinds of protections that are needed to ensure that the games are fairly run, and by honest people who cannot be manipulated.

From what we know about Internet gambling right now, I do not believe the same kind of protections are in place or they ever could be put in place. The lengthy procedure of background checks on employees, inspection of machines, oversight of operations, simply cannot be ensured through Internet gambling. Without them, I cannot see how anyone can have any level of confidence in the fairness of the games or the likelihood of receiving their winnings.

Senator KYL. Thank you very much. That is a very helpful statement.

[The prepared statement of Mr. Hurley follows:]

PREPARED STATEMENT OF JAMES R. HURLEY

Mr. Chairman, Senators, I want to thank you for inviting me to appear before you today to discuss the regulation of casino gambling. My name is James Hurley and I am Chairman of the New Jersey Casino Control Commission. The commission is a five-member panel appointed by the governor and confirmed by the New Jersey State Senate which regulates Atlantic City's \$4 billion casino industry. I realize the topic for this sub-committee hearing is internet gambling and one of the issues is whether internet gambling can be effectively regulated. What I would like to do is to describe our system of controlling casino gambling and suggest that absent a strict licensing and regulatory system there is no way to ensure the integrity of operators or games.

New Jersey developed a strict, comprehensive regulatory system back in 1977 which was designed to ensure the suppression of organized crime and that the casinos pay taxes on all money they win. We believe that it has worked very effectively to ensure not only that casinos are owned and operated by people of good character, honesty and integrity, but also that the public has confidence that the games are honestly run, fair and that their winning wagers will be paid.

To accomplish this level of public confidence, New Jersey implemented a licensing system that requires every owner, officer and director of a casino—as well as many of the officers, directors and owners of any holding or intermediary company—to file an extensive license application. They had to disclose detailed information about any criminal record, business affairs, civil litigation, at least five years of personal tax returns and voluminous additional information. Applications for a casino operating license generally fill several large file transfer boxes.

A copy of that application is forwarded to the New Jersey Division of Gaming Enforcement, which then conducts a full investigation into the applicant and its qualifiers. The gaming division looks at criminal histories, bank records, civil litigation, tax returns, SEC filings and anything else that it feels would be pertinent to determine whether a company or a person has the required good character, honesty and integrity. It even looks at newspaper articles to determine not only the fact of an applicant's good character, but also the applicant's reputation for good character.

The results of that investigation are put into a report which is submitted to the Casino Control Commission. We then schedule a public hearing into the application during which witnesses are examined and cross examined, documents are reviewed and placed into evidence and attorneys make opening and closing statements and argue points of law. At the end of that process, we then vote on whether the applicant has met its burden to prove by clear and convincing evidence that it has the required good character, honesty and integrity to hold a license.

The process is almost identical for every casino employee and casino key employee who works in New Jersey's gaming industry. They file lengthy disclosure forms, submit to rigorous investigations and, if necessary, undergo a full hearing before a commissioner to determine suitability.

Through this process, we can, and have, prevented organized crime and other unsavory individuals from owning or operating a casino in Atlantic City. But we don't stop there. We know that there are other ways for organized crime to infiltrate, influence or control the casino industry. As a result, we subject anyone who sells a product or a service to a casino hotel to licensing requirements.

Before a vendor can sell a slot machine, a deck of cards or a pair of dice to a casino, the company has to file a casino service industry license application. The officers, directors and owners of the company have to be identified and investigated to determine whether the sellers qualify for a license. While the company can start selling prior to the issuance of a license, every single transaction has to be scrutinized and approved, in advance, by our commission.

Anyone who wants to sell non-gaming products or services to a casino—widgets, perhaps—also could face licensing requirements. If a company does “regular and continuing business”—which is defined in our regulations by certain monetary thresholds—it also has to file a license application and undergo a background investigation. And even if the vendor never meets that threshold, if the Division of Gaming Enforcement discovers information that the vendor is unsavory, we can order casinos not to deal with that vendor. Let me give you an example of a wholesale seafood firm in New Jersey that was supplying casinos. The gaming division learned that one of the sales representatives was the head of the Philadelphia-based organized crime family. Even when the seafood firm offered to have that sales representative handle only non-casino accounts, we indicated that was not sufficient and we ordered casinos not to deal with the firm.

Through the licensing and registration of casino service industries, we have prevented organized crime and other unsavory elements from coming in the “back door” to influence casino operators.

Let me now move on to second prong of our system—oversight and control of casino operations.

Regulations on internal and accounting controls, gaming equipment and on the operation of the games ensure effective control and fair gaming for the public. Every casino operates under a strict set of regulations and internal controls that spell out with great detail how gaming operations are to be conducted. The rules of the games are detailed in our regulations as is the basic organizational structure for the casino. In addition, the casinos operate under the constant scrutiny of our inspectors who are on duty in every casino around the clock.

Every slot machine that an operator wants to use must be tested and approved in advance. Testing is done by the Division of Gaming Enforcement in a specialized electronic games laboratory in Atlantic City. The gaming division makes certain not only that the machine pays back at least the minimum 83 percent as required by law, but that it pays back precisely what the manufacturer says the program is designed to pay back. Once a slot machine program is approved, the computer chip containing the game is placed in the machine and sealed by the gaming division.

When large machine jackpots are won—\$35,000 or more—our inspectors secure the machine and gaming division agents test the computer chip to make certain that it has not been tampered with in any way.

Cards are inspected when a table opens and they cannot be used for more than a single day. Dice are checked when a craps table opens to make sure they are perfectly square and balanced. They too are only used for a single day. Roulette wheels are tested to make certain that they are balanced and true. There are specific procedures that casinos must follow to make certain all cards are in a deck and to reduce the possibility of cheating and collusion.

All of this is done with a system of people, watching people, watching people. The actions of a dealer are watched by a floorperson and both of them are watched by a pit boss. Shift managers watch the pit bosses and then there is an elaborate surveillance system that can monitor activities at every table and every slot machine as well as everything that goes on in count rooms or the cashier’s cage. Our inspectors are on-site watching as well and plainclothes agents of the Division of Gaming Enforcement regularly are in the casinos. Both our inspectors and the gaming division also have complete access to the surveillance system from our own offices.

Under every slot machine is a compartment where the winnings fall. But to open the compartment, there are two locks and the casino only has the key to one of them. We have the other one. The same with the drop boxes attached to the gaming tables—two keys are needed to open them. That means that our inspector must be present when the cash is collected from slots and tables.

The money is counted in secure count rooms. Once again, to get into the count room, you need to open two locks—we control one and the casino controls the other. Our inspector is physically present when all of the currency is counted and when high denominations are counted. The counts are videotaped—the “soft” count, where paper money is counted—is even audiotaped. In either case, our inspector has to verify the count before the money can leave the room. This procedure allows us to verify the amount of the casino’s tax liability.

We also require casinos prevent underage persons from gambling. Every year, casinos escort more than 30,000 underage persons from casinos. Generally, fewer than 500 are actually found gambling, but casinos know that we take this issue very seriously. If they fail to keep underage persons from gambling, casinos are subject to complaints and we have imposed significant fines against them.

The list of controls goes on and I know our time is limited. It is difficult to adequately explain in mere words how these systems work. I would like to invite you,

Mr. Chairman, and the rest of the committee to visit Atlantic City to see first hand the protections we have in place.

I hope, though, that I have given you a flavor of the kinds of protections that need to be in place to ensure that games are run fairly and by honest people and that they can't be manipulated. From what we know about Internet gambling right now, I do not believe the same kind of protections are in place or if they ever could be put in place. The lengthy procedure of background checks on employees, inspections of machines, oversight of operations simply cannot be ensured through internet gambling. Without them, I cannot see how anyone could have any level of confidence in the fairness of the games or the likelihood of receiving their winnings.

I'd be happy to answer any questions.

Senator KYL. Let's begin the questioning with Senator Feinstein.

Senator FEINSTEIN. Well, let me thank all of the witnesses. I think your testimony was excellent and right on point.

Let me ask the attorneys general this question. Some Indian tribes have argued that they should be exempted completely from this legislation. What do you think of that?

Mr. DOYLE. Well, we very much oppose such an exemption. The National Indian Gaming Regulatory Act provides for a system of compacts between the States and the tribes. Wisconsin was one of the first States to enter into compacts with tribes. We are now on our second generation of compacts. The first have expired; we are on the second. We have a process in place of negotiating them and of assuring that gambling takes place under the terms of those compacts.

To exempt the tribe would mean that a tribe, as occurred several years ago in Idaho, would claim that they have a right to conduct gambling operations in the State of Wisconsin even though they have never compacted with our State. So I think that Indian gaming, as it goes on, should go on consistent with the Indian Gaming Regulatory Act, which means that if it is going to take place in Wisconsin, it should only take place pursuant to a compact between the State of Wisconsin and a particular tribe.

Senator FEINSTEIN. Thank you very much. Ms. Montgomery, do you have anything to add to that?

Ms. MONTGOMERY. Mr. Chairman, Senator Feinstein, no. I agree entirely with General Doyle.

Senator FEINSTEIN. Thank you very much. I wanted you just for a moment, if you would—and perhaps, Mr. Doyle, because you mentioned it in your remarks, you would expand somewhat on the wire communication facility of section 1084, title 18, and why this is not sufficient to make Internet gambling illegal.

Mr. DOYLE. Well, the concern there is—and I believe, Senator, you mentioned it—is that it was intended to deal with telephone and telegraph. And the antecedents of this Act go back to the laws that kept bookies from making book over telegraph wires, and as communications now expand, microwave and other nonwire means of communication, the definition section simply is not adequate to keep up with the change in technology.

Senator FEINSTEIN. Thank you very much. One last question on technical feasibility. We are going to hear about blocking access to gambling web sites. Do you believe this could be effective in controlling the problem?

Ms. MONTGOMERY. Senator Feinstein, I think one thing we have all learned in terms of regulation is that as quickly as we do that, there will be another way around it. Obviously, as a former pros-

ecutor and legislator, and now attorney general, I would like to work on doing some effective regulation, as you have suggested. But on the other hand, it will be only one tool and we will have to have a combination of approaches in order to effectively address Internet gambling.

Mr. DOYLE. Senator Feinstein, if I might add to that, we have looked at that same issue with respect to the distribution of child pornography. Technically, at least the people who work for me on this say that as much as that effort is going on, it is not feasible at this time. Maybe it will be at some point in the future, but it certainly is not feasible now.

Senator FEINSTEIN. Mr. Chairman, I would like to ask, if you have people, Mr. Doyle, that are working on this, perhaps they can elaborate somewhat in writing on that answer because I think this is going to be one of the objections that we constantly get. And I would like to have as detailed an answer to that as I possibly could.

Mr. DOYLE. We would be happy to, Senator.

Senator FEINSTEIN. Thanks very much.

Senator KYL. Thank you, Senator Feinstein. Those are excellent points to bring out.

I might say for those who had some familiarity with our legislation last year that the enforcement mechanism is essentially the same, but there is some additional leeway provided to the service providers and others who would be asked to assist in the enforcement. The primary method of enforcement here is to disconnect the service of the illegal Internet web site, and to the extent that the providers and switching companies and phone companies and others felt this would constitute a burden upon them, something which we really did not intend, we have worked with them to develop language which will be in our bill that makes it clear that when the court finds probable cause to believe that there is an illegal site the provider will be asked to pull the plug on that site.

If it can't be done technically or if it is economically not doable, then they would be excused from that liability. We are not asking them to monitor it, in other words. Action would be precipitated by law enforcement and they would only be required to do that which they can economically and feasibly and technically do, which I think is fair. I mean, they would then be assisting in law enforcement, but not at any burden on themselves.

While it might not be perfect and it might not end up putting anybody in jail, at least it would in most cases, we think, prevent the continued transmission of this illegal activity into the United States. So that is the idea anyway, and any technical information that you can provide to us that would help us in that regard would be very, very much appreciated.

Senator DeWine, would you like to go next?

Senator DEWINE. Mr. Chairman, thank you very much. I would like to explore with Attorney General Montgomery and the other members of the panel an issue that has been of concern to me and that is the whole issue of fantasy sports, fantasy baseball. This is something that a number of people in Ohio are involved in, and I have worked with Senator Kyl over the last several months on this legislation.

In Ohio, there are a lot of individuals, Attorney General Montgomery, who avidly play these games and I would like maybe your comments about this, whether or not you think these are games of skill and not gambling and what the impact is on Ohio law.

My understanding—and I have not done it myself, but my understanding is that what people really are getting when they pay their \$16 or whatever it is is the ability to monitor sports statistics everyday. They get in a league; they do it themselves for their own amusement or 10 of them get together, and your friends get together and you pick your own—let's say you pick your own baseball team at the beginning of the season and you select who the players are. And really what you are getting through the Internet is an update everyday on the statistics, what the batting averages are, the other statistics that might be relevant, so you can see how your "team" is doing.

My concern has been that we make sure that whatever we do here does not impact on that type of activity that is enjoyed by an awful lot of our constituents. Do you have any comments on that? And I would be interested in any other comments from any other members of the panel.

Ms. MONTGOMERY. Senator, we are well aware of the fantasy sports process on the Internet, and frankly we do not see it as being a violation of Ohio law at this point. As you know, we regulate games of chance versus games of skill. In this instance, because of the access into fantasy sports—it is an administrative fee; there is an application of intelligence and skill—we have not viewed that as a gambling violation.

We would not oppose an exemption that I know exists in the Kyl bill to allow that to happen. My understanding at this point is it is in the bill and we would be supportive of that exemption.

Senator DEWINE. Any other panel members want to comment on it?

Mr. DOYLE. NAAG has done a survey of some of the States and I think there is some disagreement among the States about whether these are legal or illegal. NAAG's position has been to support the exemption as long as the fee that is being paid—as I understand, the exemption is essentially one that covers the administrative cost of running this operation; that it would be exempt from the Federal legislation. It may run afoul of some State laws, but that is for the States to decide.

Senator DEWINE. Thank you all very much. Thank you, Mr. Chairman.

Senator KYL. Thank you, and I might add we have worked with the fantasy sports folks and in our next panel we will have some additional testimony on that which I hope will be helpful.

Attorney General Montgomery, you testified that in getting on the computer you identified 690 sites responding to the phrase "Internet gambling." Were those actually 690 separate web sites, do you know, or were they different references?

Ms. MONTGOMERY. Those were hits. I think we had some 300 sites.

Senator KYL. Actual sites, right. The number of sites has been increasing.

Ms. MONTGOMERY. Exponentially.

Senator KYL. The last number I heard was 260, and it had gone up from 60. So it is really climbing rapidly. It is hard to keep track of the number of new sites coming up, so I appreciate that.

I wanted to ask each of you to comment on a recent article from the BNA publication, Bureau of National Affairs publication story on the gambling commission recommendations which I think are due out in June. The story begins, "A congressionally-appointed commission ordered to study the social and economic effects of gambling announced March 19 that it will seek a broad ban on on-line gambling when it issues its report in June." I am delighted to get that bit of information from the commission.

And then part of the story goes on to make this point, under the heading "Access by Problem Gamblers, A Concern," something that all three of you testified about. "Concerns that have emerged and driven the online gambling prohibition position during the commission's nearly 2-year probe include the access the Internet provides to underage and pathological wagerers. According to written testimony provided to the committee March 18 by the National Academy of Sciences' National Research Council, adolescents comprise the largest proportion of pathological gamblers in the country. According to statistics compiled by the Council's Committee on the Social and Economic Impact of Pathological Gambling, as many as 1.1 million people between the ages of 12 and 18 in any given year are pathological gamblers." And then the story goes on.

Each of you testified in one way or another to the difficulty of knowing who is gambling, of verifying the people that are placing the bets, and in the case of the comparison with the highly regulated States systems, the inability to enforce any particular provisions. Since one of the people that I cited in my opening statement called the Internet the crack cocaine of gambling for adolescents, could you speak to the question in terms of public policy of all three of the States that you represent—two from the standpoint of attorneys general and one from the standpoint of an official knowledgeable about the effects of gambling when it is not done properly and highly regulated? Let me start with you, Mr. Hurley.

Mr. HURLEY. Even in a highly regulated system like ours, it is impossible to identify compulsive gamblers. What New Jersey's attempt has been is to make available to people through whatever agencies or through their own recognition of a problem to get help for these people. So there is a \$600,000 appropriation that goes to the Council on Compulsive Gambling every year that comes out of fines that we levy on casinos. But if we do not make up the \$600,000, it comes from the legislature; it comes from the general appropriations.

But I just want to tell you that we think it is very difficult to identify these people. And we are there, our people are there, the Division of Gaming Enforcement is there, and the casino themselves make a claim that they are constantly watching for people with gambling problems. And so we have no idea how you could in any way know who a compulsive gambler was through the Internet.

Senator KYL. Thank you.
General Montgomery.

Ms. MONTGOMERY. Mr. Chairman, Senators, it goes without saying that in each of our respective States we as legislators, regulators, enforcers believe strongly that the public welfare has to make certain rational assumptions. We in the public field look at regulating, whether it is driving, whether it is smoking tobacco, or in this instance whether it is gambling, particularly with great attention toward our youth, the general assumption being that you as policymakers, we are policymakers or enforcers, understand that the younger the person involved, under the age of 18 particularly, the less likely there may be a connect between action and consequence.

And it is absolutely critical, it seems to me, in the public policy arena that we make those kinds of assumptions based on our own experience and our own understanding of the effects of regulation on kids. And I would sit here having worked on at least two antigambling campaigns statewide with now Senator Voinovich putting a plea out to the policymakers that, in fact, if there is a rational basis at all in the public welfare arena, it is in making these assumptions that there are some who need to be protected. And this policy that you have put into legislation is critical for us to help protect those who, either by age or predilection, have not protected themselves.

Senator KYL. Thank you.

Attorney General Doyle.

Mr. DOYLE. Senator, I agree with all that was said, and there are two further points that come to mind about it. One of them that we deal with with kids and the Internet is the fact that the kids are frequently much more adept at it than the parents, so that even if there are parents in the home, the parents may not know what their child is doing.

We deal in this issue in consumer protection on the Internet. We deal with it with pornography, sex predators that travel on the Internet, and gambling, where a child can be sitting in his or her room with a home computer traveling to places that their parents just downstairs in the kitchen have no idea that they are going to. So the concern about children I think is particularly acute with this.

The second point I would like to emphasize is something that you recognized before, Senator, and that is why it is important to act now. It was important to have acted a couple of years ago because the addictive nature of these games we have yet to really see hit the United States. The computers aren't fast enough, the modems aren't fast enough, the way to exchange value is not yet fast enough.

But we are all moving in the direction in which the highly addictive video games—we have talked a lot about sports betting here because given the speed of the Internet, that is sort of what has been taking up most of the volume. But within a number of years, most people look at this and say that every home computer will be an Atlantic City-style video game sitting on your desk at home, in which the lemons are spinning around, in which the cherries are coming up, in which the bells are ringing.

Those are the addictive games; those are the really addictive games. And they are going to be able to be played in your home

without anybody else around, without any of the other social interaction that is going on. And a person in a night, instead of reading a book or watching television, can lose \$5,000 without even thinking about it. So we have yet to see the real addictive nature of this activity reaching right into our homes, but we are right on the verge of it. And as the Internet gets faster and more powerful, that is what we are going to see. That is why when you started this a number of years ago it was said we have got to do this now before it really hits, and our window of opportunity is closing all the time.

Senator KYL. Thank you for making those two additional points.

Senator FEINSTEIN, any other questions of this panel?

Senator FEINSTEIN. No.

Senator KYL. Senator DeWine.

Senator DEWINE. No, Mr. Chairman.

Senator KYL. I want to thank this panel very much. You have been very helpful. And again, General Doyle, for all that you have done, and your staff, I appreciate it very much.

Mr. DOYLE. Thank you, Senator.

Senator KYL. Thank you all.

Ms. MONTGOMERY. Thank you very much.

Senator FEINSTEIN. Thank you.

Senator KYL. We will go right into our next panel. I would like to call to the table the three witnesses for panel two. We have three more experts now to give us a little different perspective. The first is Mr. Jeff Pash, executive vice president of the National Football League, in New York; Bill Saum, who is the director of agent and gambling activities of the NCAA, the National Collegiate Athletic Association, in Overland Park, KS; and Ms. Marianne McGettigan, counsel for the National Baseball Players Association, Portland, ME.

We welcome all three of you to the hearing this morning, and again I won't use the lights. I would like to ask you to try to keep your testimony to about 5 minutes and that will give us plenty of time for questions.

Let's start with you, Mr. Jeff Pash.

PANEL CONSISTING OF JEFFREY PASH, EXECUTIVE VICE PRESIDENT, NATIONAL FOOTBALL LEAGUE, NEW YORK, NY; BILL SAUM, DIRECTOR OF AGENT AND GAMBLING ACTIVITIES, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, OVERLAND PARK, KS; AND MARIANNE McGETTIGAN, COUNSEL, MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION, PORTLAND, ME

STATEMENT OF JEFFREY PASH

Mr. PASH. Mr. Chairman and members of the subcommittee, I am very pleased to be here to express our strong support for this legislation. I had the pleasure, Mr. Chairman, of testifying before you in 1997 in support of the bill that passed the Senate last year, and we continue strongly to support it.

I should note as a personal matter that as someone who grew up in Phoenix and then in Fresno, I am particularly pleased to testify before you and Senator Feinstein. And I want to commend you, Mr. Chairman, and your staff for your leadership on this issue, and

thank you for all of the time you have spent and your hard work in bringing this bill forward.

In our judgment, sports and gambling do not mix, and I think that on this most fundamental point there can be no disagreement. Sports gambling threatens the integrity of our games and the values that our games represent, and particularly that is true for young people. And for this reason, the NFL and all sports organizations have established strict policies relating to gambling and have actively supported Federal efforts to combat sports gambling.

We strongly supported the passage of the Professional and Amateur Sports Protection Act of 1992 which halted the spread of sports gambling in this country. And the legislation that we are discussing today is a logical and fully appropriate extension of a long, long line of Federal policy with respect to sports gambling.

The Internet Gambling Prohibition Act is necessary because as the State attorneys general testified just a few moments ago, no single State or collection of States can adequately address this problem themselves. Gambling businesses around the country and around the world have turned to the Internet in what is a clear attempt to circumvent existing prohibitions on gambling and to complicate the efforts of Federal and State law enforcement.

This bill will strengthen existing law and bring it into line with new technologies, and that is something that the Congress has repeatedly expressed its concern about in the past. Eight years ago, for example, in the context of the PASPA legislation, the Judiciary Committee noted the growth of new technologies that facilitate gambling, and the concerns over the use of those new technologies as a way of expanding gambling was an important reason that underlies the passage of that law. In 1991, those new technologies did not include the Internet, at least not on a widespread basis. But with its arrival and with its growth, it is fully appropriate for the Congress to act again to have law keep pace with technology.

As other witnesses have discussed, Internet gambling is successful largely because it is both unregulated and requires so little effort to participate. Unlike traditional casinos, where one is required to travel to the casino and where significant restrictions and protections exist, Internet gambling allows bettors access to wagering opportunities on sports 24 hours a day, 7 days a week. It is quick and easy and anonymous, but as we have heard already today, not painless.

The gambling sites, as we have seen, have been designed to resemble video games and are especially attractive to children. And sports betting, which is, of course, our principal concern, is an enticing lure to the online bettor. Studies have shown that sports betting is a growing problem for high school and college students, who may develop serious addictions to other forms of gambling as a result of being introduced to sports wagering.

Moreover, the recent sports betting and point-shaving scandals on college campuses, from Arizona State to Northwestern to Boston College, provide compelling evidence of the vulnerability of young people to the temptations of gambling. And they demonstrate in as clear a way as possible how sports gambling breeds corruption, how it undermines the integrity of the athletics that are being out on the football field or the basketball court, and how they undermine

the values that organized college and professional athletics are supposed to represent. As the Internet reaches more and more college students and school children, the rate of gambling among young people is certain to rise unless we use this opportunity to address the problem early and effectively.

Just as Congress enacted the Wire Act to prohibit the use of the telephone as an instrument of gambling, it should now adopt specific legislation to prohibit the use of the Internet for that purpose. The Internet Gambling Prohibition Act, through its injunctive relief provisions which are based on existing law and have been carefully reviewed with Internet service providers, would provide an effective mechanism for terminating or blocking access to gambling sites.

In our view, Mr. Chairman, such a mechanism is essential and we believe your bill provides it. I listened with interest to General Doyle's remarks concerning the technical feasibility of such a step, and I would note that I have been advised that it is feasible to have such a blocking mechanism, that it would not be a technical problem. And I will certainly ask that our people be in touch with subcommittee staff to address that problem and that matter in more detail.

Left unchecked, we know that Internet gambling will continue to expand exponentially, and so will the pernicious effects. Just as Congress has intervened on numerous occasions to address sports gambling, most recently in 1992, we urge it to do so again today.

Mr. Chairman, we appreciate your efforts and your leadership in this respect, and again we strongly support the passage of this bill.

Senator KYL. Thank you for that excellent statement and for your continuing strong support.

[The prepared statement of Mr. Pash follows:]

PREPARED STATEMENT OF JEFFREY PASH

Mr. Chairman and members of the Subcommittee. My name is Jeffrey Pash. I am the Executive Vice-President and General Counsel of the National Football League. I testified before you in 1997 in support of your prior bill on this matter and am again pleased to appear before you today to express the NFL's strong support for the Internet gambling Prohibition Act of 1999. We strongly support this bill because it would strengthen and extend existing prohibitions on Internet gambling, including gambling on sports events, and provide enhanced enforcement tools tailored to the unique issues presented by Internet gambling. We join the State Attorneys General who testified earlier and other sports organizations in urging adoption of this important legislation.

The NFL's policy on these issues has been consistent for decades. Simply put, gambling and sports do not mix. Sports gambling threatens the integrity of our games and all the values our games represent—especially to young people. For this reason, the NFL has established strict policies relative to gambling in general and sports betting in particular. The League prohibits NFL club owners, coaches, players and anyone else connected with the NFL from gambling on NFL games or associating in any way with persons involved in gambling. Anyone who does so faces severe disciplinary action by the Commissioner, including lifetime suspension. We have posted our anti-gambling rules in every stadium locker room and have shared those rules with every player and every other individual associated with the NFL.

The League has also sought to limit references to sports betting or gambling that in any way are connected to our games. For example, we have informed the major television networks that we regard sports gambling commercials and the dissemination of wagering information as inappropriate and unacceptable during football game telecasts. NFL teams may not accept advertising from gambling establishments.

Commissioner Tagliabue reemphasized this January that gambling and participation in the NFL are incompatible. In a memorandum to all NFL clubs, the Commis-

sioner confirmed that no NFL club owner, officer or employee may own any interest in any gambling casino, whether or not the casino operates a "sports book" or otherwise accepts wagering on sports. The Commissioner specifically stated that no club owner, officer or employee "may own, directly or indirectly, or operate any 'on-line,' computer-based, telephone, or Internet gambling service, whether or not such a service accepts wagering on sports." (Ex. A)

The League also has been an active proponent of federal efforts to combat sports gambling. We strongly supported the passage of the Professional and Amateur Sports Protection Act of 1992 (28 U.S.C. 3701 *et seq.*). This 1992 legislation, known as PASPA, halted the spread of sports gambling by prohibiting states from enacting new legislation legalizing sports betting. The League also worked to promote the passage of the Chairman's Internet gambling legislation in the last Congress. Like PASPA, the proposed legislation is a logical and appropriate extension of existing federal law and policy. The precedents for federal action in this area were well canvassed by the full Judiciary Committee in its report accompanying the 1992 legislation (S. Rep. No. 248, 102d Cong., 1st Sess. 5-8 (1991)).

The Internet Gambling Prohibition Act of 1999 is a necessary and appropriate federal response to a growing problem that, as the State Attorneys General have testified, no single state can adequately address on an individual basis. Ten years ago, a bookmaker might have used the telephone to call his customers. Today, he simply logs on. Gambling businesses around the country—and around the world—have turned to the Internet in an obvious attempt to circumvent the existing prohibitions on gambling contained in Title 28 and PASPA. Many offshore gambling businesses provide betting opportunities over the Internet, in a clear effort to avoid or complicate an effective federal and state law enforcement.

The bill is needed because it strengthens existing law to facilitate the enforcement of gambling prohibitions in the face of new technology. In its report accompanying the PASPA legislation eight years ago, the Judiciary Committee noted the growth of "new technologies" facilitating gambling, including the use of automatic teller machines to sell lottery tickets, and proposals to allow "video gambling" at home. S. Rep. No. 248, *supra*, at 5. It was, in significant part, the specter of expanded gambling raised by those "new technologies" that spurred Congress to enact PASPA. In those days, the "new technologies" did not yet include the Internet. But now the Internet is a significant source of gambling activity, and it is appropriate for Congress—as it has done in the past—to ensure that law keeps pace with technology.

The problem of Internet gambling is significant—and growing. According to recent publications, the Justice Department has estimated that Internet gambling generated \$600 million in revenue in 1997 alone. (Ex. B). Recent estimates of future gambling activity on the Internet range from \$2.3 billion to \$10 billion within the next two years. (Exs. C, D).

Internet gambling is successful both because it is currently uncontrolled and because so little effort is required to participate. Unlike traditional casinos, which require gamblers to travel to the casino and place their bets on-site, Internet gambling allows bettors access to on-line wagering facilities twenty-four hours per day, seven days a week. Gamblers can avoid the difficulty and expense of traveling to a casino, which in many parts of the country requires out-of-state travel. Internet gamblers also can avoid the stigma that may be attached to gambling in public on a regular basis. Indeed, Internet gambling threatens to erode the stigma of gambling generally, including sports gambling.

Internet gambling sites are easily accessible and offer a wide range of gambling opportunities from all over the world. Any personal computer can be turned into an unregulated casino where Americans can lose their life savings with the mere click of a mouse. Many of these gambling web sites have been designed to resemble video games, and therefore are especially attractive to children. But gambling—even on the Internet—is *not* a game. Studies have shown that sports betting is a growing problem for high school and college students, who develop serious addictions to other forms of gambling as a result of being introduced to "harmless" sports wagering. Recent sports betting and point-shaving scandals on college campuses from Arizona State to Northwestern University to Boston College provide further evidence of the vulnerability of young people to the temptations of gambling. They also demonstrate how sports gambling breeds corruption and undermines the values of teamwork, preparation and sportsmanship that our game represents.

As the Internet reaches more and more college students and schoolchildren, the rate of Internet gambling among young people is certain to rise. Because no one currently stands between Internet casinos and their gamblers to check identification, our children will have the ability to gamble on the family computer after school, or even in the schools themselves. And we must not be lulled by the paper tiger set up by proponents of Internet gambling—that children cannot access gambling web

sites because they lack credit cards. It does not take much effort for a child to “borrow” one of his or her parents’ credit cards for the few minutes necessary to copy down the credit card number and use it to gain access to an Internet gambling service.

The problem connected with Internet gambling transcends the NFL’s concern about protecting the integrity of professional sports and the values they represent. According to experts on compulsive or addictive gambling, access to internet sports wagering dramatically increases the risk that people will become active, pathological gamblers. The National Council on Problem Gambling has reported that sports betting is among the most popular forms of gambling for compulsive gamblers in the United States. That means that once individuals become exposed to sports betting, they may develop a real problem with recurrent and uncontrollable gambling.

Conducting a gambling business using the Internet is illegal under the Wire Act (18 U.S.C. § 1084) and indeed has been prosecuted—for example, in the case brought against numerous Internet sports betting companies last March by federal authorities in the Southern District of New York (Ex. E). But as the prosecutors in that case plainly recognized, asserting jurisdiction over offshore gambling businesses that use the Internet can be problematic. More significantly, the Wire Act does not include direct mechanisms for ensuring termination by Internet service providers of access to online gambling sites.

Just as Congress enacted the Wire Act to prohibit the use of the telephone as an instrument of gambling, so Congress should now enact specific legislation to prohibit the use of the Internet as an instrument of gambling. And just as the Wire Act provides a mechanism for bringing about the termination by telephone companies of service to gambling businesses, so the Internet Gambling Prohibition Act of 1999, through its injunctive relief provisions, would provide an effective mechanism for bringing about the termination by Internet service providers of access to gambling sites. In our view, Mr. Chairman, providing such a mechanism for ensuring that Internet service providers will terminate access to such sites is critical to any legislation to combat Internet gambling.

In supporting the PASPA legislation to prevent the spread of legalized betting, Commissioner Tagliabue testified:

Sports gambling threatens the character of team sports. Our games embody the very finest traditions and values. They stand for clean, healthy competition. They stand for teamwork. And they stand for success through preparation and honest effort. With legalized sports gambling, our games instead will come to represent the fast buck, the quick fix, the desire to get something for nothing. The spread of legalized sports gambling would change forever—and for the worse—what our games stand for the way they are perceived. *Quoted in S. Rep. No. 248, supra, at 4.*

Left unchecked, Internet gambling amounts to legalized gambling. Its effects on the integrity of professional and amateur sports and the values they represent are just as pernicious. Just as Congress intervened to stem the spread of legalized sports gambling in 1992, so it must intervene to stem the spread of Internet gambling today.

Mr. Chairman, we applaud your efforts and the efforts of your staff to address this important problem. The Internet Gambling Prohibition Act of 1999 will strengthen the tools available to federal and state law enforcement authorities to prevent the spread of Internet gambling into every home, office and schoolhouse in this country, and will send the vital message—to children and adults alike—that gambling on the Internet is wrong. We strongly support the passage of your bill.

Thank you.

EXHIBIT A



NATIONAL FOOTBALL LEAGUE

Paul Tagliabue
Commissioner

MEMORANDUM

TO: Chief Executives, Club Presidents

FROM: Commissioner Tagliabue

DATE: January 26, 1999

RE: Restatement of League Policy on NFL Owner Involvement in Gambling-Related Businesses

Introduction

The League's Constitution and Bylaws contain a number of prohibitions with respect to gambling, both specific prohibitions as to betting on NFL games and a general prohibition of conduct detrimental to the welfare or best interest of the League or professional football. These provisions have been the basis of the League's policy relative to gambling activities and the ownership of interests in gambling-related enterprises, whether casinos, racetracks or otherwise.

As to betting on professional football games, the League's Constitution specifically provides that any owner, shareholder, or partner in a member club who engages in betting on any NFL game may be required to forfeit and sell his interest in the member club. (Article 8.13(C).) On this basis, the League has required strict separation between ownership of controlling interests in NFL teams and ownership of casinos such as those operated in Nevada. This is because those casinos, even though lawful and regulated by state authorities, conduct sports betting and, specifically, point spread betting on NFL games.

League policy has also consistently prohibited any association with illegal gambling or with individuals involved in illegal gambling (sports bookmaking, etc.) because such associations directly threaten and put at risk the integrity of the League and public confidence in professional football, and therefore represent "conduct detrimental."

In 1992, Congress enacted Federal legislation that, in effect, prohibited any expansion outside of Nevada of state-sponsored sports betting. As a result of this legislation, all states other than Nevada were effectively prohibited from authorizing or licensing casinos that conduct sports betting, and all states were effectively prohibited from adopting state lotteries based on point spreads tied to the outcomes of professional

¹ Professional and Amateur Sports Protection Act, 28 U.S.C. § 3701 (1992).

or amateur sporting events. This 1992 Federal legislation rested on an express Congressional finding that sports gambling "threatens the integrity of, and public confidence in, amateur and professional sports."

During the past decade, however, America has seen an explosion in non-sports casino gambling and other types of gambling enterprises. (More recently, sports betting has become widely available through Internet operations tied to offshore gambling establishments.) The explosion in non-sports casino gambling has included a number of major casinos operated by Indian tribes in several states.* These and similar issues have increasingly engaged large segments of the public in regulatory disputes or state referenda such as California's Proposition 5, which was hotly contested in last November's elections.

To address issues raised by this explosion in non-sports gambling, we advised all member clubs in mid-1997 that we were considering with the Finance Committee whether to recommend new League policies and procedures relating to the possible ownership by NFL owners of interests in legalized gambling establishments, in particular, casinos, "card rooms," slot machine ventures, and other such operations, including those that are licensed and regulated by states or state agencies.

Restatement of League Policy

In reviewing League policy on these matters, we began by accepting the premise of the existing policy – namely, that there must be a clear line between (a) the ownership of interests in NFL teams and (b) forms of gambling that directly or indirectly damage, or seriously threaten to damage, the interests or welfare of the League and its member clubs. This premise has served the League well, and the limitations on other possible business activities of NFL owners resulting from this premise have proven to be well justified.

NFL owners have generally not been involved in the expanding forms of legal, state-regulated gambling that have developed in recent years. It is thus timely to restate the League's policy on these matters in light of current conditions, public attitudes, and League interests.

The League's Constitution gives the Commissioner the responsibility to decide when the owners of interests in NFL clubs have either violated the Constitution or been guilty of conduct detrimental to the welfare or best interest of the League or professional football. (Article 8.13(A).) The League's Constitution also authorizes the Commissioner to interpret and establish policy and procedure with respect to the provisions of the Constitution and enforcement thereof. (Article 8.5.) Pursuant to that authority, I have determined that in applying the provisions of the Constitution and Bylaws dealing with "conduct detrimental," effective with this Memorandum, the League's policy with respect to the ownership by any NFL owner of any interest in any type of gambling casino or other gaming or gambling business will be as set forth in paragraphs A through D below.

* Such Indian casinos are operated under the Federal Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq. (1988).

A. Casinos

1. No owner of an interest in an NFL club may own, directly or indirectly, any interest in any gambling casino, whether or not such a casino operates a "sports book" or otherwise accepts wagering on sports.

2. No other officer or employee of an NFL club may own, directly or indirectly, any interest in any gambling casino, whether or not such a casino operates a "sports book" or otherwise accepts wagering on sports.

3. For purposes of this prohibition, the term "gambling casino" is to be broadly defined and includes casinos, card rooms, lotteries, slot machine operations, and the like.

B. Internet Gambling Enterprises

No owner of an interest in any NFL club, nor any other officer or employee of an NFL club may own, directly or indirectly, or operate any "on-line," computer-based, telephone, or Internet gambling service, whether or not such a service accepts wagering on sports.

C. Other Gambling-Related Enterprises

No owner of an interest in an NFL club, nor any other officer or employee of an NFL club may own, directly or indirectly, or operate any other gambling-related enterprise, including advisory services such as publications, "tout services," and the like, whether or not such services address professional football or any other team sport.

D. Publicly Traded Enterprises

1. No owner of an interest in an NFL club, nor any other officer or employee of an NFL club may own any interest in a publicly traded enterprise where the enterprise is involved to a significant extent in activities related to gambling. For purposes of this prohibition, an enterprise is involved to a significant extent in activities related to gambling if one-third or more of the enterprise's gross revenues or operating profit in any of the last three years is attributable to gambling-related operations.

2. NFL owners and other officers and employees of NFL clubs may own interests in publicly-traded enterprises where the primary business of the enterprise is not related to gambling, so long as the owner or employee does not own more than five percent of the company's stock and does not serve as an officer or director of the company.

Apparent or alleged violations of this policy will continue to be decided by the Commissioner on a case-by-case basis, after notice and hearing, as provided in Article 8.13(A).

This restated League policy rests on the premise that no League interest will be served by even limited direct or indirect ownership of, or investment in, non-sports casinos or other gambling-related businesses by NFL owners. Instead, such ownership would likely damage League interests in the long term by, among other things, blurring the line between the absolute need for integrity in the playing and presentation of NFL games and the risks created by a misplaced perception that gambling and participation in the NFL are compatible. At a time when college sports have seen a recurrence of gambling-related point shaving scandals, it is particularly appropriate to reinforce the separation of gambling from NFL football.

This restated policy also recognizes that although large segments of the public may have accepted the expansion of legalized casino and other gambling, and increasingly view such gambling as an acceptable and enjoyable form of entertainment, recent public opinion surveys confirm that sizable majorities of the public continue to view such gambling in very negative terms. Some such surveys even show, for example, that large segments of the public believe that organized crime is involved in legalized casino gambling and that legalized gambling of any form "opens the door for organized crime." Given these public attitudes, a public perception – shared by NFL fans – that either the League itself or NFL owners are engaged in, or profiting from, such legalized gambling is inconsistent with the welfare and best interest of the League.

If any owner or member club has any questions as to any aspect of this policy, please be in touch with Jeff Pash or Milt Ahlerich in this office.

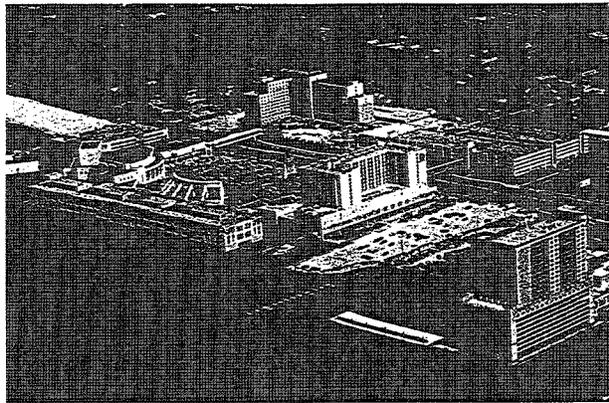
Feature Commerce

EXHIBIT B

As regulatory efforts intensify, gambling industry steps up lobbying, political donations

Casinos Look To Improve
Their Odds on Capitol Hill

By Alan K. Ota



An aerial view of "casino row" in Biloxi, Miss., the home state of Senate Republican Leader Lott, who has opposed legislative action that would hurt the industry.

For the second year in a row, National Republican Senatorial Committee Chairman Mitch McConnell flew to Las Vegas last fall to collect contributions from the gambling industry for GOP candidates.

The Kentucky senator was not alone. A parade of lawmakers traveled to the casino mecca in the 1997-98 election cycle to solicit donations from Stephen A. Wynn, chairman of Mirage Resorts Inc., and other industry honchos.

The other visitors included Vice President Al Gore; Senate Majority Leader Trent Lott, R-Miss.; Senate Minority Leader Tom Daschle, D-S.D.; and Charles B. Rangel of New York, the ranking Democrat on the House Ways and Means Committee. All wanted the same thing — money from the deep coffers of the casino world.

Frank J. Fahrenkopf Jr., the former Republican National Committee chairman who now heads the American Gaming Association, the trade group representing casino operators, made sure that each visitor got a full briefing from casino executives and tours

that included displays of tight security measures.

"We wanted to make absolutely sure they understood our industry and its concerns," Fahrenkopf said. "Historically, for years, members of both parties have had fundraisers, and yet we'd find that very few knew a thing about the industry."

The generous donations and methodical lobbying are part of an all-out campaign by the gambling industry to avoid expanded federal regulations. A loose coalition of anti-gambling advocates, including conservative groups such as the Christian Coalition and consumer watchdogs such as Public Citizen, are pressing for new curbs during the 106th Congress.

The \$50 billion-a-year gambling industry has been on a winning streak across the country, doubling its revenues since 1990. There are now lotteries in all but 13 states, and of those 13, 10 offer some other form of gambling, such as casinos or horse or dog racing. Only three — Hawaii, Tennessee and Utah — have not been attracted to gam-

Quick
Contents

A congressionally commissioned study of the effects of gambling, due in June, is expected to set up a showdown between the gaming industry and moral conservatives, among others. Lawmakers are expected to debate a variety of proposals to tighten regulations on gambling.

The Virtual Casino

The Internet has emerged as a key element in the congressional debate over gambling.

Sen. Jon Kyl, R-Ariz., has vowed to renew his efforts to ban Internet gambling in 1999, citing the toll that gambling can take on families and the danger of abuses by unregulated businesses that take bets over the Internet.

Last year, the Senate voted 90-10 to approve Kyl's Internet gambling ban as an amendment to the 1999 Commerce, Justice and State spending bill. But the proposal was not included in the omnibus budget law (PL 105-277), and it died. (1998 CQ Weekly, p. 2817)

Dozens of Web sites offer a chance to bet. The Justice Department estimates that they account for \$600 million in illegal sports wagers and millions more in legal wagers on electronic games, which are not specifically barred by federal law.

For the most part, the Web sites are not operated by casino operators, and they often are based offshore, outside the reach of state or federal authorities. Some major casinos regard Internet gambling operators as unregulated rivals and have argued for a ban or tougher regulation, while other casinos are experimenting with the Internet for marketing or intrastate gambling that would be regulated by the states.

"We would support an interstate ban but have no position on intrastate Internet gambling," said Wayne Edward Mehl, a Nevada Resort Association lobbyist representing 100 casino operators.

Democratic Sen. Richard H. Bryan of Nevada, a defender of casinos, has argued that states may have a tough time regulating Internet gambling. He said the "only responsible choice Congress can make is to simply prohibit it."

'You Can't Hide On-Line'

The Justice Department has offered mixed reviews of proposed legislation. In a crackdown last

spring, the agency accused 21 operators and managers of electronic gambling services of conspiracy to violate a 1961 wire communications law (PL 87-216). The law makes it illegal for gambling businesses to take wagers on sporting events by phone. The defendants were accused of violating the law by accepting sports wagers over the Internet or from toll-free telephone calls.

"We have a simple message: You can't hide on-line, and you can't hide offshore," said Attorney General Janet Reno.

However, the department also quietly raised concerns that legislation could be difficult to enforce if it created penalties for bettors.

Kyl's proposal would set a \$500 fine and three months in jail for internet bettors and a \$20,000 fine and four years in jail for Internet gambling operators.

Nelson Rose, a gambling law expert at the Whittier Law School in California, said the legislation might clarify confusion about whether the 1961 law applies to sports betting over the Internet and other forms of gambling such as bingo or electronic card games. "It's terribly unclear whether the law bans Internet gambling," Rose said.

But Kyl's proposal is opposed by the Interactive Gaming Council, a trade group for Internet gaming operators. Instead of a ban, the group supports a global regulatory scheme to ensure that games are fair.

The council gained allies among media companies that offer "fantasy" sports leagues that allow people to win prizes based on the performance of imaginary teams, including a Web site sponsored by ESPN, the Walt Disney Co.'s sports news operation.

Kyl's proposal was revised to allow a reasonable administrative fee for such "fantasy" games. But Sue Schneider, chairman of the Interactive Gaming Council, said Kyl's bill remained far too restrictive.

—Alan K. Oz

bling by the lure of jobs and new revenues.

But now, the industry faces a daunting challenge as legislators prepare to receive a report from a national commission that is expected to show that legalized gaming carries huge societal costs, including gambling addiction, corruption, prostitution and violent crime.

Gambling: Soon or Burden?

Critics of the industry are hoping the report will provide the impetus for legislative action, such as reintroduction and passage of a proposal first made last year by former Sen. Daniel R. Coats, R-Ind. (1989-99), to eliminate a federal policy that allows gamblers to offset any winnings with losses for tax purposes. Sen. Jack Reed, D-R.I., is considering offering a similar bill in 1999.

Other proposals discussed by anti-gambling advocates include limits on advertising similar to those applying to tobacco companies and financing treatment for gambling addiction. (Tobacco, 1998 CQ Weekly, p. 3178)

"First it was tobacco. Next it was guns. Now they are coming after us," said Wayne Edward Mehl, a veteran lobbyist for the Nevada Resort Association. He accused the industry's critics of trying to handcuff a lucrative business that is an important source of revenue for the states.

"Gambling is going to be a major issue in 1999. And frankly, we are very concerned," said Mehl.

The gambling industry has been amassing an army of lobbyists and using campaign donations to try to curry favor with lawmakers of both parties in hopes that it can shape or kill any gambling bills that surface this year.

Showdown in June

The battle over anti-gambling initiatives is expected to begin in earnest in June, when the National Gambling Impact Study Commission will send its long-awaited report to Capitol Hill. The panel was created by Congress three years ago to study the social and economic effects of the gambling industry. (1996 Almanac, p. 5-44)

"I think we're going to find there is a major problem with addiction. And second, there's a problem with corruption," said Rep. Frank R. Wolf, R-Va., a strong opponent of gambling who sponsored the law (PL 104-169) creat-

Indian Gambling Operations Find 'Devoted' Advocate in Rep. Kennedy

Rep. Patrick J. Kennedy, D-R.I., represents an urban district far from the native lands of the Agua Caliente Band of Cahuilla Indians and the Viejas Indians of California.

But geography aside, he has become their champion in promoting and defending Indian gambling operations against attacks by anti-gambling advocates and rival casino owners.

The 31-year-old son of Sen. Edward M. Kennedy, D-Mass., is a rising star in the Democratic Party, recently named chairman of the Democratic Congressional Campaign Committee, the candidate recruitment and fundraising apparatus for House Democrats. And he has used his seat on the House Resources Committee to champion Indian gambling.

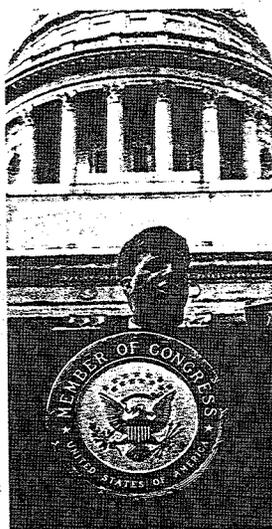
He plans to offer a bill in 1999 similar to one he pushed unsuccessfully last year that would have permitted the Narragansett Indians to operate a gambling business on their reservation in southern Rhode Island.

The bill has become a focal point in the battle between Indian tribes and Wall Street companies that back casinos in America's biggest gambling meccas — Las Vegas and Atlantic City.

The American Gaming Association, one of the gambling industry's primary trade groups, has not taken a stand on Indian gambling, because some of its members have contracts to manage Indian casinos. But some members of the group argue that Indi-

sort industry, said his members were concerned about efforts by Witherpoon and other anti-gambling advocates to attack the industry's political donations and lobbying.

"Frankly, it's possible that some candidates won't accept contributions, particularly in the presidential campaign," he said.



Kennedy announces his bid for a third term at the Rhode Island statehouse on June 22, 1998.

an casinos are poorly regulated and have an unfair advantage because they pay no state or federal taxes.

About 150 Indian tribes operate casinos across the country. They include the opulent 23-story Foxwoods Resort Casino in Connecticut, which has \$1 billion in annual revenues and is operated by one of the nation's smallest tribes, the

He noted that former Senate Majority Leader Bob Dole, R-Kan. (1969-96), was criticized for accepting money from the industry for his 1996 presidential campaign.

But in the 1998 congressional elections, candidates of both parties flocked to Las Vegas. And in Nevada, the industry has already prepared for a

Mashantucket Pequots.

A study by the Center for Responsive Politics found that a dozen tribes with casinos donated more than \$830,000 to political parties in the 1997-98 election cycle, including \$350,000 from the Connecticut tribe.

Increased Oversight

Senate Indian Affairs Committee Chairman Ben Nighthorse Campbell, R-Colo., and Senate Minority Whip Harry Reid, D-Nev., are considering changes in the regulation of Indian casinos, including increased funding for federal oversight.

Kennedy's proposal would reverse an exemption that prevented the Narragansetts from operating a gambling business under the Indian Gaming Regulatory Act of 1988 (PL 100-497) unless they received approval from voters in the state for any new casino. (1988 *Almanac*, p. 622)

"One foe of gambling, GOP Sen. John H. Chafee of Rhode Island, fumed that Kennedy seemed "totally devoted" to expanded gambling in Rhode Island. But Kennedy replied that it is "hypocritical" to prohibit an Indian casino in a state that operates a lottery.

While Kennedy refused to take political donations from the Narragansetts for his own re-election campaign, his leadership political action committee got \$21,000 from seven Indian casino operators in the final weeks of the 1997-98 election cycle.

— Alan K. Ota

long battle over restricting gambling.

Rep. Shelley Berkley, D-Nev., elected to her first term in November to represent the Las Vegas area, said casino executives and state officials are worried that the gambling issue could become a one-sided battle, with Nevada and other states with private casinos pitted against lawmakers from states

without. "I'm prepared to lay down on the tracks right next to our senators," she said, pledging to defend her state's gambling industry.

Berkley knows the gambling industry firsthand. She worked as a waitress at the Sands Hotel and later as the hotel's vice president of government affairs.

Like most casino executives, she said she did not worry much about Washington, but the industry had a rude awakening in 1995 when President Clinton proposed a 4 percent tax on gambling receipts to help finance the welfare overhaul.

The proposal was short-lived, but Mehl said the industry — which had long focused its attention on winning support for casinos, video poker and other businesses in state capitals — began to keep a closer watch on Washington.

After throwing its support behind Dole in the 1996 presidential election in response to the Clinton tax proposal, the industry became more balanced in giving to candidates of both parties, according to Mehl and other lobbyists.

"The industry has gotten a lot more sophisticated in dealing with politics," Mehl said.

Donations have helped to win friends for the industry in Congress. And their help may be needed to try to deflect or reshape anti-gambling proposals in 1999.

A Target for Taxes

The administration's gambling tax proposal never got off the ground and is not expected to be revived, but, because of its rapid growth, the gambling industry could offer an inviting target for politicians searching for sources of revenue to pay for new programs.

The Coats amendment last year would have raised money to pay for education vouchers by preventing gamblers from subtracting losses from their winnings to reduce their income tax bill. And some anti-gambling groups are calling for new fees on the gambling industry to raise money for gambling addiction treatment.

But foes of gambling offer mixed views on proposed taxes.

"I don't want a tax, because I don't want government to depend on gambling money. It would be very hard for government to break that habit," said Tom Grey, executive director of the National Coalition Against Gambling

Expansion.

Last year, Coats' proposal sparked opposition from Mirage Resorts, which contributed \$250,000 to the Senate GOP campaign committee soon after the proposal was introduced. Coats withdrew the amendment after Lott opposed it. (1998 CQ Weekly, p. 1736)

Both Sen. Jon Kyl, R-Ariz., and Rep. Robert W. Goodlatte, R-Va., have pledged to introduce legislation to attack a rapidly growing form of betting — Internet gambling. (Box, p. 192)

Other lawmakers, including Jerrold Nadler, D-N.Y., are considering proposals to enlist help from financial services companies to keep an eye out for problem gamblers. Nadler might renew his proposal from last year that would eliminate priority for creditors in bankruptcy proceedings that want to collect gambling debts charged to credit cards from automated teller machines in casinos.

Jackpot on K Street

While lawmakers consider legislation targeting gambling, the industry has stepped up an aggressive lobbying campaign to go along with its political giving.

The industry's top guns include Dole, now a lobbyist and an adviser to the California Nations Indian Gaming Association; former GOP Chairman Haley Barbour, who represents Powerhouse Technologies, which operates state lotteries; and former Rep. Dennis Eckart, D-Ohio (1981-93), who represents Circus Circus Enterprises Inc.

Gambling interests have also been building bridges to political operatives with ties to the GOP and conservative interest groups.

For example, the American Gaming Association and Mirage Resorts have tapped Republican pollster Frank Luntz to conduct surveys and political research. And the association has also hired the consulting firm headed by conservative tax activist Grover Norquist to follow issues on Capitol Hill.

Gambling critics have responded to the industry's army of lobbyists by urging lawmakers and political parties to shun contacts with gambling interests.

"Gambling is corrupting the political process," Wolf said recently. "Both sides are taking the money, Republicans and Democrats."

As an example, he pointed to the case of former Louisiana Gov. Edwin Edwards, a Democrat who has been

charged by federal prosecutors of taking a \$400,000 payment from Edward DeBartolo Jr. in return for awarding the state's last riverboat casino license to his company, DeBartolo Entertainment. Edwards denies it was a bribe.

DeBartolo, who also owns the San Francisco 49ers professional football team, gave \$100,000 to federal political action committees from 1988 to 1996, according to a study of federal election records by Common Cause.

Under Pressure

Hoping to short-circuit some of the debate, both sides have been putting pressure on the National Gambling Impact Study Commission in hopes of shaping its report. The panel is assembling data on the scope of gambling-related problems in the nation.

The gambling industry insists that the commission must acknowledge that the industry is an increasingly important economic force. It accounts for more than 1 million jobs in gambling operations and businesses that build, operate or provide supplies to them. And it pays more than \$2.9 billion each year in federal, state and local taxes to support public schools and other government services.

Industry leaders also contend that their operations have drawn investors and tourists to previously overlooked towns across the country.

But anti-gambling advocates are pushing the commission to recommend tough new measures to restrict gambling. The critics argue that gambling's success has come at high cost to individual bettors and society.

Studies estimate that there are more than 4 million gambling addicts in the nation, and perhaps 11 million more who are on the verge of becoming addicts.

Earl Grinols, an economics professor at the University of Illinois, said gambling's social costs include lost time and money that could be spent on other activities, the potential for increased crime, and regulatory costs for state, federal and local government.

Bernie Horn, spokesman for the National Coalition Against Legalized Gambling, predicted that the study would favor gambling opponents and harden battle lines in the debate.

"People are going to wonder how somebody can be pro-family and be taking all this money from gambling interests," he said. ♦

EXHIBIT C



FRI./SAT./SUN., MARCH 12-14, 1999

Basketball? You bet

**Gambling
finds a home
on the Web**

COVER STORY

On-line betting makes March madness easy

By Tom Lowry
USA TODAY

NEW YORK — March money madness is moving on line. Millions of people are betting on the NCAA men's and women's basketball tournaments on the Internet.

As games kicked off Thursday, Las Vegas bookies say their business is being pinched because of new competition from the Internet. Even office pools are going high-tech as workers use Internet sites to organize their bettors and track winners and losers.

About 2.5 million people are estimated to be playing NCAA tournament pools on line this year. That number is expected to reach 10 million by 2001, says interactive sports game firm Wall Street Sports.

More than \$300 million was bet on sports on line last year. And though other forms of gambling are expected to grow faster than sports, total on-line betting could grow to more than \$2.3 billion by 2001, says Christiansen/Cummings, a gambling and sports industry consulting firm. There are 280 on-line gambling sites.

Please see COVER STORY next page ►

Web gamblers taking some risks

Continued from 1A

Though Nevada sports betting and some office pools, depending on the state, are legal, the growing number of offshore Internet gambling sites that require credit cards are illegal. And they're raising concerns among regulators and lawmakers.

"Because they aren't regulated, these Web site operators feel they

COVER STORY

can supersede state laws," says Wisconsin Attorney General James Doyle, who heads an Internet gambling task force.

Agents from Doyle's office will be placing bets on line throughout March as part of their surveillance. Since 1997, Doyle has sued three Internet gambling operators for violating nuisance and gambling laws.

Still, Internet gamblers say the offshore gambling sites are fun and easy to use.

Consider Rob, 34, a New York criminal defense lawyer who took Thursday off. His plan: Plop on the sofa in his West Side apartment, order food, watch the games and monitor his bets on his laptop.

Rob, who did not want his last name used, has two offshore Internet betting accounts, one based in Antigua and the other in Costa Rica. He pays for bets with a Visa card. In addition, he says, he uses a bookie to place the \$100- to \$200-a-game bets.

"I like the Internet for my more exotic bets like betting whether Florida A&M will ever have a lead over Duke," Rob says.

But legislators are looking to spoil Rob's fun.

Sen. Jon Kyl, R-Ariz., is pushing legislation to prohibit gambling on the Internet. His bill passed the Senate, a spokesman said, but didn't make it through the House during the last session. It will be reintroduced this month.

Kyl's bill would extend to new technologies a law prohibiting interstate sports gambling by phone or wire.

The NCAA tournaments present an opportunity for the on-line betting industry to showcase its services.

"People are on line 24 hours per day watching the lines, wagering, setting up accounts," says Bryan Abboud, president of Interactive Gambling and Wagering, which markets software to on-line betting sites.

"You've got two weeks to study the Super Bowl. But March Madness is the most intense because there are so many games," says Abboud, whose company is based in Curacao. The men's and women's tournaments each play 63 games.

Meanwhile, the on-line activity is hurting business in Vegas, the sports betting mecca. The amount bet on the NCAA could be about \$70 million this year, about \$10 million less than last year.

"We did see a leveling off a little bit for the Super Bowl this year, and we

kind of expect it for the tournament as well just because of the impact offshore wagering has now," says Pete Korner, operations manager of Las Vegas Sports Consultants.

"But it's still a very popular event that should rival the Super Bowl," which ran about \$76 million this year in legal Nevada betting, Korner says. Meanwhile, corporate America's bettors are turning to the Internet for their annual pool rituals.

States have different laws governing sports pools; some say they're OK as long as there's no take for the house. Even in states where pools are illegal, very often the ban is not actively enforced.

Dozens of computer Web sites advertise software programs to organize and run office pools for the tournament. Many stage their own on-line pools, though usually for prizes, not actual wagering.

Insight.com, an on-line computer retailer, is offering a \$1 million prize for the fan who can pick the winners of all 63 games.

"I'm out of it already," says Kirk Culberson of Chandler, Ariz., after Syracuse University lost Thursday.

But like millions of other fans, he's also competing for local bragging rights — and about \$175 — in an office pool that's been going for 20 years at the electronics manufacturing firm where he works. About 35 co-workers are entered, and most don't follow college basketball until tournament time.

"We each put in \$5. It's not a lot, but it makes all the games a whole lot more fun to watch," says Culberson, who describes himself as an "obnoxious" fan of the University of Arizona Wildcats.

Larry Cotter, CEO of Wall Street Sports in Fairfax, Va., says about 125,000 people have signed up with his firm to manage their pools on line. Anyone who picks all 63 games correctly will get a \$1 million prize from his company.

Cotter says he will use revenue from ads on his Web site to recoup the \$225,000 spent on the contest.

Wall Street Sports, launched in 1997, develops and hosts interactive sports games. One is the "It's Madness" NCAA pool. Cotter acknowledges there's probably about a 1 in 75 million chance a player will win by picking all 63 winners.

Members can use a password to get in. Instead of an office manager coming around to tell employees how they're doing, anyone can go in and see how many points he and his co-workers have.

Rich Murphy, who does client development for a portfolio management firm in Palo Alto, Calif., says he doesn't miss the old office pool. "You save some trees. We used to hand out sheets and it's a lot of work. Now you can just go on line."

Erik Lautier, 26, a Manhattan opera singer and Duke graduate, is picking his alma mater to win each of the eight pools he's in, six of them on line. Last year he did none on line. Among on-line pools he's in: Sporting

News, CNN and ESPN as well as individual sites.

Most on-line sites are for bragging rights, no betting involved. But Lautier warns: "Some ask you to send in \$5. I didn't do any of those because I didn't want to send a check to some random address."

Even the White House wants a piece of the NCAA action.

Bloomberg Radio White House correspondent Tina Stage, a "huge" Indiana University fan, runs an annual \$5 pool. This year, about 35 people are in so far — a mix of news reporters, White House staffers and Secret Service agents.

Stage says no one has ever expressed any reluctance to play. "The Secret Service guys are pretty open about giving (the pick sheets) to me," she says. This week, with President Clinton and his entourage in Central America, Stage says some staffers — including Deputy Press Secretary Barry Iviv — have been faxing their picks in from countries such as Guatemala and El Salvador.

The pools are illegal in the District of Columbia, but the law is rarely enforced.

For some, the excitement of having a few dollars at risk in even the most benign of pools will become a trap. Because sports betting is considered socially acceptable and is so widespread during March Madness "the percentages tell us that some of the people betting this year will become problem gamblers," says Keith Whyte, executive director of National Council on Problem Gambling.

The NCAA recognizes the special allure of basketball betting, especially among college students, and is running public service announcements during game broadcasts pointing out the pitfalls of sports betting.

Bill Seum, the NCAA's chief gambling investigator, says the association has distributed to the 64 teams in the tournament an anti-gambling videotape: "It's Just Not Worth It." The 96 referees also received tapes.

But for others who choose to remain oblivious to the Internet and regulatory concerns, the tournament games are pure joy.

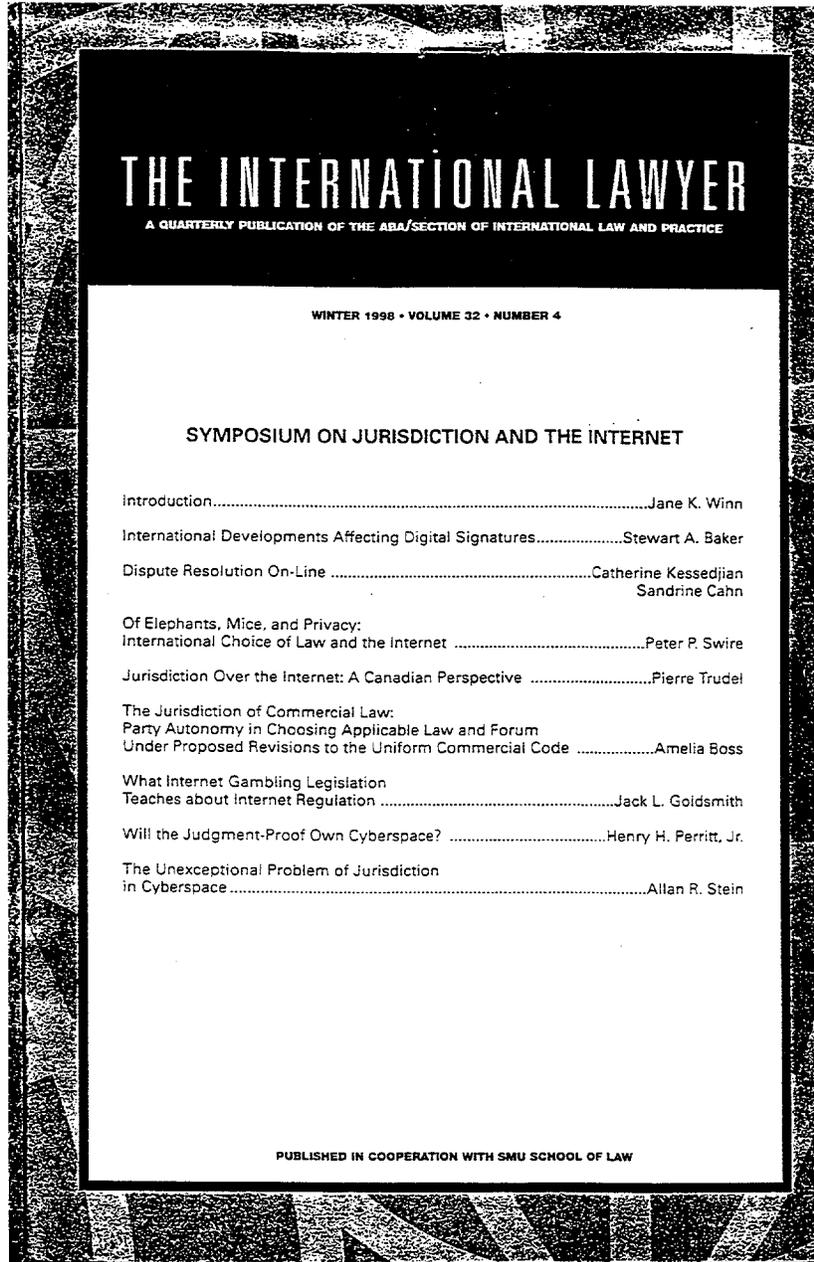
Mark Zingerman, 47, owner of Felix & Oscar's restaurant and pub in Des Moines, was in the sports book of Las Vegas's Rio hotel and casino for Thursday's opening tip-offs. He and four buddies have been going to Las Vegas for March Madness for 28 years in a row.

He wouldn't dream of doing offshore betting via the Internet. "We are on an island, the island of Las Vegas," he says. "The feeling when we walk into the casino and then walk into the sports book, and you see all the numbers lit up and all the spreads, is just great."

"We eat, we watch basketball, we have fun and, we gamble a little."

Contributing: Stephanie Armour, Del Jones, Patrick O'Driscoll, Gary Mihoces, Michael Hiestand, Mimi Hall and J. Taylor Buckley.

EXHIBIT D



What Internet Gambling Legislation Teaches About Internet Regulation

Congress is considering the enactment of the Internet Gambling Prohibition Act (IGPA).¹ In accordance with the widely held view that the Internet defies national regulation,² many commentators claim that the IGPA will not stop or even diminish Internet gambling.³ In this essay, I use the IGPA to show why

*Jack Goldsmith is an Associate Professor of Law at the University of Chicago. Thanks to Larry Lessig, Doug Lichman, and George Triantis for comments and conversation, Kyle Gahrman and Greg Jacob for excellent research assistance, and the Arnold and Freda Shure Research Fund for support. The Internet Gambling Prohibition Act was approved by the Senate on July 23, 1998. It was passed as Amendment 3266 to Senate Bill 2260 (The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999), 144 CONG. REC. 58792-01, 58,801 (daily ed. July 23, 1998) [hereinafter Amend. 3266]. On August 10, 1998, the House passed its version of the Commerce appropriations measure, House Bill 4276, without including a ban on Internet gambling. It does not appear that an Internet gambling prohibition will be enacted this year. Internet gambling legislation was likely to be enacted in 1999 by the National Commission on Internet Gambling Regulation. See L. R. HANLEY, *Internet Gambling: The Rise of a New Casino* (U.S. Department of Justice, Office of Legislative Affairs, in Sen. Patrick Leahy, U.S. Senate (May 26, 1998) (found at <<http://www.igonline.com/games/oddslisting.cfm/23807>>). Although I use the Senate bill as a springboard for analyzing Internet regulation, nothing in my analysis turns on the enactment of this legislation, or on the final form that Internet gambling legislation might take.

2. See James Boyle, *Foreword to Cyberspace: Surveillance, Sovereignty, and Heterarchal Control*, 17 *YALE J.L. & ETHICS* 171 (1998) (arguing that cyberspace is a "borderless" space that it would be largely immune from state regulation); see generally David B. Johnson & David Post, *Law and Borders—The Rise of Law in Cyberspace*, 48 *STAN. L. REV.* 1367, 1370-73 (1998) (most prominent and comprehensive argument in support of this claim).

3. See Hanley J. Goldstein, *On-line Gambling: Down to the Wire?*, 8 *MARQ. SPORTS L. J.* 1 (1997); Seth Gorman & Anthony Loo, *Blackjack or Bust*, 16 *LOV. ARTS & ENT. L. J.* 667 (1996); Scott M. Monpas, Comment, *Gambling Online: For a Thousand Dollars, Let the Government Regulate*, 24 *INDIANA J. OF LEGISLATION* 241 (1997); Michael J. Susskind, Comment, *Internet Gambling: Regulation by Mobile Law*, 7 *INDIANA J. OF LEGISLATION* 241 (1997); Michael J. Susskind, Comment, *Internet Gambling: The Legality of Online Gambling*, 2 *B.U. J. SEA. & TECH. L.* 7 (1996); Andrew Boyer, *Internet Gambling Bill: All Java Are Off*, WASH. POST, July 25, 1998, at E1; Compare John T. Fojut, *Legislative Update: Ace in the Hole: Regulation of Internet Service Providers Saves the Internet Gambling Prohibition Act of 1997*, 8 *DTPA-VOL-LCA J. ART & ENT. L.* 155 (1997). See also *infra* note D for additional sources.

skepticism about the feasibility of Internet regulation rests on an impoverished conception of regulation.⁴

I. Internet Gambling

To gamble on the Internet, one simply visits one of dozens of gambling sites and inputs the financial and related information needed to establish a credit account. One can then engage in all forms of virtual gambling, including sports wagering, casino wagering, horse and dog wagering, and lotteries. The interactive gambling sites available on one's computer screen originate on computer servers that are almost always located and operated from abroad.

Internet gambling is a booming business. In 1997, Internet gambling in the United States generated \$600 million in revenues on sports betting alone, and it is estimated that it will generate up to \$10 billion by the year 2000.⁵ The industry's success is due in large part to the fact that it is easier to gamble on the Internet than in real-space. Instead of traveling to a casino or dog track or lottery outlet, one can play roulette or bet on the greyhounds or buy a lottery ticket from a computer in one's home or office. Not only does a gambler avoid the inconvenience and other costs of traveling to a gambling venue, but she also avoids reputational sanctions that might accompany gambling in a public place. In addition, Internet gambling facilitates gambling by those who cannot legally gamble in real space, such as minors and people living in non-gambling states.

All gambling produces benefits and costs. On the benefit side of the ledger are revenues for the state, local employment, and personal recreation. On the cost side of the ledger are fraud, addiction, decreased productivity among gamblers, child gambling, and family and other social tensions produced by gambling losses.

Internet gambling changes the calculus of these costs and benefits. To the extent that Internet gambling makes it easier to gamble, it enhances the personal enjoyment of gambling, but it also facilitates gambling by children, and (because of the Internet's virtual environment) it might increase the incidence of fraud, addiction, and social displacement. Perhaps more significantly, Internet gambling diminishes the revenue-generating benefits of real-space gambling, at least from the perspective of local regulators. It does this because the very large majority of gambling sites are located abroad. This means that revenues from Internet gambling are earned and taxed by persons and governments abroad rather than at home. In addition, as more people substitute Internet gambling for real-space gambling, local employment and local recreation expenditures drop. These and

4. For a more comprehensive analysis of the feasibility (and legitimacy) of Internet regulation from the perspective of jurisdiction and choice of law, see Jack L. Goldsmith, *Against Cyberharmony*, 65 U. Chi. L. Rev. 1199 (1998).

5. See, e.g., *Internet Gambling Ban Clears Senate With Ease*, L.A. TIMES, July 24, 1998, at A24 (quoting recent estimates of Sen. Bill Frist and the Justice Department).

other real-world, local harms explain why state and federal governments have begun to regulate Internet gambling.

II. Internet Gambling Legislation

Gambling from one's home or office via offshore bookies is not new. Such gambling has long taken place by telephone, and is proscribed by a variety of state and federal statutes, most notably the 1961 Interstate Wire Act (Wire Act).⁶ The Wire Act penalizes bookies who use a "wire communications facility" to receive bets or wagers on sporting events or contests.⁷ The Wire Act has rarely been enforced, because enforcement is costly and the social harms alluded by telephone gambling have been relatively low.⁸

As explained above, the harms of Internet gambling—and in particular the various revenues lost to offshore gambling sites—significantly undercut the justifications for legalized gambling, at least from the perspective of domestic regulators. This is the main reason why Congress is considering amendments to the Wire Act. The proposals in the IGPA would alter the Wire Act in three important respects.⁹ First, the IGPA would make clear that the Wire Act applies to Internet gambling.¹⁰ Second, it would extend the Wire Act's prohibitions and penalties to individual bettors.¹¹ Third, it would authorize federal and state officials to require Internet service and access providers to block access to illegal Internet gambling sites.¹²

The conventional wisdom seems to be that the IGPA will not work.¹³ Offshore owners and operators of Internet gambling sites are beyond the enforcement

6. 18 U.S.C. §§ 1081-1084 (1994).

7. *Id.* at § 1081. The Wire Act defines "wire communications facility" as: "any facility, system, or service, including, but not limited to, facilities, personnel, and service (using other things, the receipt, forwarding, or delivery of communications) used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission."

8. *See id.* at § 1081. For more on the Wire Act, see, e.g., Britis, *Gambler: Gaming on the Internet: The Odds Are on The House. But How Long Will It Last?*, at 58, (last modified Nov. 18, 1996) <<http://www.law.tul.edu/cyberlaw/pw9/kim/>>.

9. IGPA amends the Wire Act's definition of bets or wagers to apply to all forms of gambling, and inserts a new section that explicitly prohibits Internet gambling. *See* Amend. 3266, *supra* note 1.

10. *See* Amend. 3266, *supra* note 1, at 38,802.

11. *See* Amend. 3266, *supra* note 1, at 38,802. The Wire Act's definition of bets or wagers includes such as telephone, facsimile, and state officials to require common carriers or federal agents to enforce Internet service and access providers to take similar action. Amend. 3266, *supra* note 1, at 60(2) and 60(3).

12. In addition to the sources cited in note 3, *supra*, see Scott L. Jones, *Commentary, Internet Betting Ban Won't Work*, *DUNDEE POST*, Aug. 13, 1998, at B11 ("IGPA does not even come close to addressing the problem of supporting the industry's revenue stream"); *Internet Gambling: The Real World Comes to the Virtual World*, *COMPUTER WORLD*, Dec. 14, 1998, at 10 ("The Internet would not stop on the Commerce, Online Course Registrar, May 31, 1998, at G14 ("[p]rohibition would not stop on the gambling"); *They're, supra* note 3 ("trying to control what happens on the Internet is an exercise in futility"); Mark Tran, *One of the Web's Most Profitable Securities Under Attack*, *THE GUARDIAN*, June 26, 1997, at 6 ("Not experts think efforts to outlaw online gambling are useless").

jurisdiction of the United States. They cannot be shut down by the U.S. government. In addition, the United States cannot (at an acceptable cost) stop at the border the information protocol packets that make Internet communications possible. Finally, enforcement of an Internet gambling prohibition against individual bettors in the United States is futile. Not only is it difficult and costly for the government to monitor personal Internet use or trace Internet communications, but the government could also not possibly apply its prohibitions against all domestic Internet gambling bettors.

III. What Internet Gambling Legislation Teaches About Internet Regulation

The claim that the IGPA and similar Internet regulations will not work rests on an impoverished understanding of the way governments can regulate the Internet. Governments have many more options for regulating Internet transactions than the Internet regulation literature suggests. The fact that the United States cannot directly regulate Internet gambling site operators and equipment located abroad does not mean that it cannot regulate the transnational communications that these site operators facilitate. Such communications take place only in virtue of persons and equipment that are located in the United States. The United States can achieve a great deal of regulatory control over these transjurisdictional communications by regulating these local persons and property.

Most obviously, the United States can exercise control over both residents of the United States involved in foreign gambling operations and any local assets of persons involved in such operations whether or not they are residents of the United States. For example, the United States has recently invoked the unamended Wire Act to initiate a prosecution against the owners and managers of six Internet sports gambling companies headquartered in the Caribbean and Central America.¹³ Many of the individual defendants lived in the United States and were arrested; the local assets of other defendants were seized. Internet gambling firms can, of course, avoid such enforcement by not maintaining any presence in, or connection with, the United States, including not holding accounts with financial institutions that have a U.S. presence. Nonetheless, local enforcement against Internet gambling firms' local presence raises the marginal cost of the operation. To this extent, however small, the regulation is effective.

The United States has many other options for imposing regulatory control over Internet gambling. For example, the IGPA's prohibitions apply to bettors within the United States. It is admittedly costly to identify and prosecute local Internet bettors. But the government need not prosecute each individual violator. Through

13. See Patricia Hunsaid, *Sports-Bet Bust: Feds Charge 14 in Foreign Tiding of U.S. Wagers*, *NWToday*, Mar. 5, 1998, at A3; Dean Stankman, *US Indicts 14 Over Gambling on the Internet*, *Wall St. J.*, Mar. 5, 1998, at A8; *More Charged in Internet Betting*, *Sun Dixon Union-Tribune*, Mar. 27, 1998, at D3.

selective but notorious prosecution of violators, it can deter individuals it otherwise would have no intention of prosecuting. The effectiveness of this approach will depend on the rate and publicity of individual prosecutions and the size of the penalty. The Senate version of the IGPA imposes a penalty of three months in jail and fines of up to three times the amount wagered or received for each individual violation.¹⁴ For many bettors this potential penalty will not be a deterrent in the absence of unexpectedly aggressive enforcement. But for many others it will. And of course there is nothing sacrosanct about the penalties currently prescribed by the IGPA. The United States could achieve greater control by imposing a twenty-year penalty for each individual violation. The point is that by raising the penalty on local bettors the government can also raise the cost of Internet gambling and to this extent achieve regulatory control.

The most effective form of enforcement under the IGPA is the ability to order local Internet service providers to block access to illegal gambling sites.¹⁵ Almost every Internet user in the United States accesses the Internet via a provider with a local presence. In contrast to their ability to filter out particular sites on the basis of content criteria, Internet access providers have a relatively easy time blocking access to particular website addresses. This form of regulation can thus literally shut down access to Internet gambling sites within the United States.¹⁶ A U.S. resident could still access these Internet gambling sites by making an international phone call to an offshore Internet access provider. But this method of circumvention is difficult and costly, and would deter the bulk of local bettors. And, of course, the Wire Act can be used to enjoin local telephone companies from permitting international calls to offshore access providers who give access to Internet gambling sites.

A different response to the injunction provisions of the IGPA is that a blocked gambling site can circumvent the injunction by changing its Internet address. Given the current architecture of the Internet, this form of circumvention works fairly well for persons abroad trying to send discrete content into the United States. But Internet gambling is different. It is a real-time activity that depends on continual access. It will be much less attractive to bettors if Internet wagering faces a constant threat of interruption, followed by the need for bettors to locate the blocked site's new address. In addition, the government will be able to identify the relocated site just as readily as individual bettors, and can continue to bound the gambling site as it changes addresses. These regulatory strategies can significantly raise the costs of Internet gambling—both to offshore Internet gambling firms and local individual bettors.

14. See Amend. 3266, *supra* note 1, at 38,802.

15. See Ficht, *supra* note 2, at 172.

16. Internet access providers could easily set up proxy servers and block any traffic based on Internet addresses. In principle, the very architecture of the Internet could be structured to block Internet addresses; for example, routers could be programmed not to forward information from particular addresses.

EXHIBIT E

Page 27

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LENGTH: 1251 words

HEADLINE: 14 Facing Charges In First U.S. Action On Internet Betting

BYLINE: By BENJAMIN WEISER

BODY:

Pursuing the first Federal prosecution of Internet sports gambling, the authorities in Manhattan charged 14 owners and managers of 6 offshore companies yesterday with illegally using interstate phone lines to attract and take on-line wagers from Americans who placed their bets with the click of a mouse.

The case against the defendants, who are all Americans and maintain that their business has been operating openly and legally, comes in an industry that has exploded onto the Internet in recent years.

The Government said yesterday that on-line sports betting had garnered \$600 million in gross revenues last year, up from about \$60 million in 1996. In January alone, one on-line betting service received about 40,000 calls, prosecutors said, which appeared associated with betting on the Super Bowl.

The Government said that it was not charging any bettors who used the Internet sites but that the prosecution should serve as a warning that such activity was illegal.

It was unclear yesterday, however, what the impact of the prosecution would be. Gambling experts said that the size and anonymity of the Internet would make it impossible for the Government to close the burgeoning industry, which consists of at least a hundred known betting services. "You're never going to see a shutdown," said Anthony Cabot, a gambling law expert in Las Vegas, Nev. "What you're going to see is a number of people being dissuaded from entering the industry and those who are in the industry are going to take much greater precaution in hiding their ownership if they are U.S. citizens."

In moving against the executives of the offshore companies, which are based in the Caribbean and Central America, prosecutors said they were concerned that the use of the Web had vastly expanded the market for illegal gambling in the United States and consequently increased the risks associated with betting on professional and amateur sports.

"Cybergambling over the Internet greatly multiplies all of these risks," said Mary Jo White, the United States Attorney in Manhattan, whose office announced the charges.

The gambling arrests are only the latest in a string of Internet-related

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**LEXIS-NEXIS**

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cases, as the Government finds itself playing catch-up with the illicit enterprises born from the Web's unregulated growth. Agents now peruse chat rooms, looking for people who trade in child pornography. The Drug Enforcement Agency has agents who specifically deal with narcotics and amphetamines being dealt over the Web, and with the advent of electronic stock trading, the authorities must now monitor cyberspace for securities pirates.

In the gambling industry, Ms. White said the "instantaneous access" of on-line services was an irresistible lure both to global bookies and potential bettors who can bet and lose large amounts of money without ever leaving home.

Three of the 14 defendants were arrested in the United States yesterday, officials said, and one more was expected to be shortly. Officials said the Federal Bureau of Investigation was contacting the 10 other defendants outside the country to make arrangements for their surrender.

"The Internet is not an electronic sanctuary for illegal betting," Attorney General Janet Reno said in a statement. "To Internet betting operators everywhere, we have a simple message: You can't hide on line and you can't hide offshore."

Some defendants, reached by telephone, said they were stunned at the charges and had been operating their businesses openly and with the approval of their host countries. "We're licensed to do what we do here by a sovereign government," said Jay Cohen, a partner in the World Sports Exchange in St. John's, Antigua.

Another defendant, Kerry Rogers, who was arrested yesterday, said by telephone last night from Las Vegas that the charges were ludicrous and grandstanding by a United States attorney. Mr. Rogers, who said he was the Internet provider for Winner's Way, based in the Dominican Republic, said he planned to fight the charges. He added that he was not in the gambling business but the Internet business.

The defendants, all of whom are charged with conspiracy to use the Internet and phone lines to make wagers, also include a lawyer and two former stockbrokers. All the defendants reached yesterday, as well as several lawyers representing some of them, denied any wrongdoing. A lawyer for Mr. Cohen, Benjamin Brafman, called the decision to prosecute "a reach."

"I think it's an interesting and novel theory that's being advanced by the Government, but I think it's a theory that will in the final analysis be rejected by the courts," Mr. Brafman said.

Prosecutors said that the F.B.I. executed a search warrant yesterday at an office of one of the defendants, SDB Global, at 82 Wall Street.

A call to SDB Global's wagering operation in Costa Rica rang busy late yesterday and no one associated with the company could be reached by phone in New York for comment.

Prosecutors said Internet sports-betting companies had set up operations offshore, advertising their services in newspapers, direct mail and on the Web.



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Customers typically deposit about \$500 with the on-line services, said one prosecutor, Thomas C. Rubin, wiring the money or using a credit card, and then use the site's betting lines to ascertain the latest odds that a particular team will win or lose. Once the bettor has made his choices, Mr. Rubin said, he "can click on the 'wager link' and place a bet on the Internet."

The minimum bets are usually \$10 on the Internet, or \$50 by phone, officials said. The services typically take a 10 percent fee of the bets.

Lewis D. Schiliro, assistant director of the F.B.I. in charge of the New York office, said the investigation began about seven months ago and involved agents posing as bettors, opening accounts and making on-line wagers.

State and Federal officials have sought legislation to attack the growing on-line gambling problem, including bills introduced in the Senate and House that would expand existing laws addressing betting over interstate phone lines to other forms of gambling, including on the Internet.

But gambling law experts said that the Government had already made clear its view that the on-line betting was illegal and that Ms. White's decision to bring charges was not unexpected. "It means that the Federal Government is going to test the boundaries of what's legal on the Internet under existing law," Mr. Cabot said.

Ms. White also said that her office had written to numerous telephone companies directing them to discontinue service to the companies whose executives were charged in the case.

If convicted of the charges, each defendant faces a maximum sentence of five years in prison and a \$250,000 fine, prosecutors said.

The proliferation of on-line sports betting services in recent years is in part due to the willingness of local officials in the Caribbean and Central American countries to license the operations. Antigua, which charges a license fee of \$100,000 for an on-line company, has about 25, according to news reports.

Gambling Charges: On-Line and Offshore

Following are the six companies charged yesterday with running illegal Internet gambling operations.

Island Casino . . . www.islandcasino.com
 SDB Global . . . www.sdbg.com
 Galaxy Sports . . . www.galaxysports.com
 World Sports Exchange . . . www.wsex.com
 Winner's Way . . . www.winnersway.com
 Real Casino . . . www.realcasino.com

LANGUAGE: ENGLISH

LOAD-DATE: March 5, 1998



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Newsbytes

March 27, 1998, Friday

LENGTH: 869 words

HEADLINE: Feds Expand Internet Gambling Case

DATELINE: NEW YORK, NEW YORK, U.S.A.

BODY:

(NB) -- By Bill Pietrucha, Newsbytes. The case against offshore Internet gambling operations is growing, with charges filed against seven more owners, managers and employees of five Internet sports betting companies located in the Caribbean. Earlier this month, the US government also filed charges against 14 owners and managers of six online betting companies in the first cases of federal prosecutions for gambling on sports over the Internet.

"We will continue to monitor and vigorously prosecute offshore sports betting operations that engage in this blatantly illegal activity," US Attorney for the Southern District of New York said. "Offshore sports betting operators who use the telephones, Internet or other forms of wire communications to solicit bettors from the United States are acting in violation of federal law."

The five separate complaints charge the seven new defendants, all of whom are US citizens, with "owning and/or operating sports betting businesses that illegally accept wagers on sporting events over the Internet and telephones."

All of the companies advertise and promote their sports betting operations to US customers on Web sites, the complaint stated.

The defendants also solicit US bettors by, among other things, maintaining marketing offices in the US, advertising in magazines published and distributed in the US, and mailing promotional literature from locations in the US, the Justice Department charged.

"Such blatant and widespread efforts to evade gambling laws cannot and will not be tolerated," US Attorney Mary Jo White said at a Manhattan news conference. The cases will certainly become the testbed for laws against Internet gambling.

"These cases send an important message that we will vigorously prosecute any use of the Internet to conduct criminal activity," White said. "Federal law clearly prohibits anyone engaged in the business of betting or wagering from using interstate and international wire communications, including the Internet and telephones, in connection with betting on sports events."

Underscoring the importance the Justice Department is putting on these cases, US Attorney General Janet Reno told Internet betting operators that "we have a simple message: you can't hide online and you can't hide offshore."



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The six separate complaints charge the defendants, all of whom are US citizens, but run Internet sports betting operations headquartered in the Caribbean and Central America.

According to the complaint, the seven new defendants are affiliated with Galaxy Sports and Grand Holiday Casino both located in Curacao; World Sports Exchange and World Wide Tele-Sports, both located in Antigua; and Global Sports Network, located in the Dominican Republic.

The 14 defendants charged earlier this month with conspiracy to transmit bets and wagers on sporting events via the Internet and telephones are Galaxy Sports, Island Casino, also located in Curacao, Real Casino and SDB Global in Costa Rica, Winner's Way in the Dominican Republic, and World Sports Exchange. SDB Global also has offices in Manhattan, for which a federal search warrant was executed.

The complaints noted that World Sports Exchange and Galaxy Sports continued to operate sports betting operations following the arrests or owners and managers of those companies earlier this month.

White said that of the 14 defendants named in the arrest warrants unsealed on March 4, 11 have been arrested or surrendered, while three others, including Steve Shillinger, Gene O'Brien and Brian Janus remain fugitives.

The other defendants charged this week are being notified that warrants have been issued for their arrests, White said, and they will be placed in custody upon their return to the United States.

Undercover Federal Bureau of Investigation (FBI) agents had accessed the Internet sites for each of the companies from computers located in the FBI's offices in Manhattan. The agents then opened accounts with each of the companies, typically by transferring money to the companies through Western Union, according to the complaints.

The agents obtained point spreads on a number of sports events that the companies made available on the Internet or by telephone, and then placed wagers on the outcomes of those games from computers and telephones in the FBI's Manhattan offices.

Each of the companies charged a ten percent fee for every bet placed, and checks representing the proceeds of the betting were sent to an undercover address in Manhattan, agents said.

The complaints also charge that all the companies accepted bets over the telephone, and two of the six also accepted bets through Web pages on the Internet.

Pursuant to the case, the US Attorney's Office has sent letters to a number of telephone companies directing them to discontinue telephone service to the six companies.

Each of the defendants faces a maximum sentence of five years in prison and a fine of up to \$250,000 if convicted, White said.



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The National Law Journal

March 30, 1998, Monday

SECTION: INTERNET LAW; Pg. B7

LENGTH: 1947 words

BYLINE: By Kenneth A. Freeling, Ronald E. Wiggins; Mr. Freeling is a partner, and Mr. Wiggins is an associate, in the intellectual property group of New York's Kaye, Scholer, Fierman, Hays & Handler L.L.P.

HIGHLIGHT:

Despite tough talk from prosecutors, and despite indictments of those charged with Internet gambling, no court has held that U.S. law prohibits such betting.

BODY:

IN JANUARY, John Russell, a Justice Department spokesman, was widely quoted as stating, "We have no jurisdiction [to prosecute Internet gambling operators]. The offense has not been made on U.S. soil." Since then, the government appears to have had a change of heart. In announcing the first federal indictments against Internet gambling operations earlier this month, both Attorney General Janet Reno and U.S. Attorney Mary Jo White warned against using the Internet to engage in betting or wagering operations.

But no court has ever held that federal law prohibits Internet gambling. In fact, despite tough talk from federal law enforcers, the cases sidestep potentially thorny Internet jurisdictional issues by attacking conduct that has long been considered illegal in the United States: interstate sports betting by means of the telephone. In each of the cases, because the use of telephones in the manner alleged in the complaints could be sufficient to sustain a conviction under 18 U.S.C. 371 for conspiracy to engage in illegal wagering operations under 18 U.S.C. 1084, the broader Internet issues may be left unresolved.

Two elements must be present for a violation of § 1084(a). n1 First, the defendant must be engaged in the business of betting or wagering. n2 This element has been held to reach professional gamblers, whose activities are within the scope of the proscribed conduct. n3 Second, information assisting in the placing of bets and wagers must be transmitted by means of a "wire communication facility." n4 In applying this provision, federal courts have uniformly construed this term to mean the telephone, n5 though no court has ever held that "wire communication facility" was limited to telephonic communications. In fact, 18 U.S.C. 1081 defines "wire communication facility" broadly to mean "any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery of communications) used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission."



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n1 *Truchinski v. U.S.*, 393 F.2d 627 (8th Cir. 1968).

n2 E.g., *Truchinski*, 393 F.2d, at 630; *Cohen v. U.S.*, 378 F.2d 751, 758 (9th Cir. 1967).

n3 *U.S. v. Sellers*, 483 F.2d 37 (5th Cir. 1973).

n4 E.g., *Truchinski*, 393 F.2d, at 630.

n5 E.g., *U.S. v. Blair*, 54 F.3d 639 (10th Cir. 1995).

Each of the complaints charges the named defendants with a single count of conspiracy under 18 U.S.C. 371 to violate 18 U.S.C. 1084. All of the defendants allegedly own and/or operate offshore sports betting operations in which the Internet and telephones are used for wagering purposes. In all of the six cases, bets were placed by an undercover FBI agent using the telephone. In two of the cases, bets were placed both over the telephone and using the Internet. In addition, the complaints allege various other telephonic communications involving defendants' operations which might establish an offense under § 1084(a).

None of the complaints relies exclusively on Internet activities in support of the charges. They do, however, attempt to equate Internet and telephone use.

There is little doubt that engaging in offshore sports betting operations by telephonic communications is illegal under § 1084. For example, in *U.S. v. Blair*, n6 the defendant was charged with, and pleaded guilty to, operating an illegal gambling business in the Dominican Republic in which he accepted telephone wagers on professional and college basketball games from U.S. residents by means of a toll-free number.

n6 54 F.3d 639.

Thus, while Internet use by the defendants may provide some evidence that the defendants engaged in betting, the government does not have to rely on proof that bets were placed or taken over the Internet to make its case.

In fact, there could be significant differences between telephonic and Internet communications for § 1084 purposes, depending on the particular facts of a case. § 1084 was enacted in 1961 as part of an omnibus crime bill to suppress organized gambling activities over wire communications. n7 The Internet can be much more effective than the telephone for interstate gambling. The Internet's reach makes possible practically unlimited simultaneous multichannel communications. The potential number of bettors who can access a Web-based service is limited only by the number of connections to the Web and the service's ability to handle traffic.

n7 H.R. Rep. 87-967, at 2631 (1961).

If, however, a sports betting operation is not taking wagers from players located in the United States over the Internet, but rather is using its Web site to advertise its services, post odds or convey other wagering-related information, or to take bets from locations in which Internet gambling is legal,



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the government may find it difficult to prove a § 1084 violation, even if the Web site is accessible in the United States. § 1084(b) states:

"Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal."

Additionally, the operator of an Internet sports betting business may not, in many circumstances, be able to discern the location of a party who places a bet using the Internet. Because § 1084 is a specific-intent crime, the government must prove that an offshore defendant knew he or she was taking bets from U.S. locations. While it is possible that the wagering party's location may be derived from financial or other information provided to the sports betting operator, the anonymous nature of the Internet raises potential evidentiary difficulties that telephone wagering might not. And perhaps most fundamental, the extent of U.S. or state authority to exert control over nondomestic Internet activities, as opposed to domestic telephone service, is unclear.

Although these first indictments may not constitute a direct assault on Internet gambling, they do expose potential concerns not only for owners and operators of Internet gambling Web sites, but also for other entities with which they do business. These issues, in turn, highlight the difficulties of domestically legislating a medium that has no physical home.

One of the more intriguing aspects of the indictments is that one of the purported offshore sports betting "owners and operators" is identified in the complaint only as the Internet provider for Winner's Way Casino. In general, an Internet Service Provider, or ISP, provides a Web site owner with access to the Internet. It is possible that the government is taking the position that a person or entity providing a betting operation with Internet access is "engaged in the business of betting or wagering" for § 1084 purposes. Were that the case, the government's interpretation of the law would be extremely broad, posing the threat of prosecution to ISPs having little direct contact with the sports betting operation.

If, instead, the government intends to prove that the defendant was responsible for day-to-day operations, then charging him or her would seem to fit within the scope of the statute, even if he or she has no ownership interest in the gambling operations. As stated by the 9th U.S. Circuit Court of Appeals in *Cohen v. U.S.*, n8 "Section 1084 makes no distinction between those engaged in the business of gambling on their own behalf and those engaged in the business on behalf of others."

n8 378 F.2d 751, 758.

Another significant development in these prosecutions is the action taken by the government under §1084(d). This provision permits the government, "acting within its jurisdiction," to instruct a telephone company to discontinue service to any entity that is using its service in violation of § 1084(a). Relying on this provision, the U.S. attorney's office sent letters to several telephone companies directing them to discontinue service to the companies whose owners



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and operators were charged.

While this provision has survived constitutional attack, n9 whether the U.S. attorney is acting "within its jurisdiction" in directing that telephone service to entities organized, existing and acting within the scope of their authority under the laws of a foreign sovereign be terminated is far from clear. It remains to be seen how the telephone companies so notified, the offshore companies themselves and the governmental authorities that have authorized these entities to engage in gambling activities using interstate telephone lines will react to the U.S. attorney's directives.

n9 See *Telephone News Sys. Inc. v. Illinois Bell Telephone Co.*, 220 F. Supp. 621 (N.D. Ill. 1963).

In addition, 18 U.S.C. 371, under which the defendants were charged, may provide a basis to prosecute persons other than owners and operators of Internet gambling businesses. This section outlaws two or more persons from conspiring "to commit any offense against the United States."

Congress is also addressing gambling on the 'Net. The pending Internet Gambling Prohibition Act of 1997 seeks to supplement § 1084 by explicitly prohibiting Internet gambling. Under the proposed § 1085, it would be "unlawful for a person to place, receive, or otherwise make a bet or wager, via the Internet or any other interactive computer service in any State." § 3(b)(1). It would also be illegal "for a person engaged in the business of betting or wagering to engage in that business through the Internet or through any other interactive computer service in any State." § 3(c)(1).

The reach of this proposed statute is much broader than the current § 1084. In particular, the prohibition against taking or placing a bet or wager via the Internet or other interactive computer service applies to any person and is not limited to entities engaged in the business of betting or wagering.

The bill also defines the phrase "interactive computer service" broadly as "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet." n10 This definition would seemingly cover even private networks not connected to the Internet. Coupled with the equally broad prohibition on betting, this provision could reach such mainstays as office pools circulated on a company's internal e-mail system.

n10 § 3(a)(1).

Notably, the bill suggests that there are congressional doubts as to regulating conduct occurring over the Internet that is beyond U.S. borders. § 5 directs the secretary of state to begin negotiations with foreign countries within six months of enactment "to conclude international agreements that would enable the United States to enforce" violations outside of the country. n11

n11 § 5(a).

While the new indictments ultimately may shed little light on the legality of Internet gambling, they may herald increased legislative and law enforcement



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activity against online wagering operations. But with such high stakes, and given the practical difficulties in enforcing even the toughest of anti-gambling laws against hundreds or thousands of Internet gambling operations worldwide, it remains to be seen whether this effort will pay off.

LANGUAGE: ENGLISH

LOAD-DATE: March 31, 1998



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Senator KYL. Mr. Bill Saum.

STATEMENT OF BILL SAUM

Mr. SAUM. Mr. Chairman and Senator Feinstein, I am pleased to appear before you today to express the National Collegiate Athletic Association's support for the Internet Gambling Prohibition Act of 1999. The NCAA is a nonprofit association of approximately 1,150 colleges, universities, athletic conferences and related organizations devoted to the regulation and promotion of intercollegiate athletics for over 300,000 student-athletes.

As the NCAA's Director of Gambling and Agent Activities, I am responsible for coordinating a comprehensive program to address gambling issues. My duties range from developing educational materials for NCAA members and student-athletes on sports gambling topics to conducting investigations related to violations of NCAA rules in this area.

The NCAA opposes all forms of sports gambling because of its potential to undermine the integrity of sports contests, while jeopardizing the welfare of the student-athlete and the intercollegiate athletics community. Despite Federal and State laws that prohibit sports gambling in 47 States, this activity remains a growing problem on college campuses. I have witnessed firsthand the negative impact that sports gambling has on the lives of college student-athletes.

Within the last year, the public has learned of point-shaving scandals on the campuses of Arizona State and Northwestern University. The impact of these cases must not be minimized. Several of the student-athletes involved were indicted and sentenced to serve time in Federal prison. Coaches and teammates were betrayed and the two schools involved have seen their excellent reputations tarnished. It is clear that sports gambling is not a victimless crime.

While there are no comprehensive studies available that analyze the prevalence of sports gambling or gambling in general on college campuses, the preliminary evidence reveals an alarming trend. A 1998 study conducted by the University of Michigan surveyed 3,000 NCAA female and male student-athletes. The research revealed that 35 percent of the student-athletes have gambled on sports while in college. Over 5 percent of the male student-athletes wagered on a game in which they participated, provided inside information for gambling purposes, or accepted money for attempting to perform poorly in a contest. Furthermore, according to Dr. Shaffer, Director of Harvard University Medical School's Division on Addiction, research shows that more youth are introduced to gambling in general through sports betting than through any other type of gambling activity.

The high incidence of gambling on college campuses is not just limited to student-athletes; it extends to the general student body. A growing consensus of research reveals that the rates of pathological and problem gambling among college students are higher than any other segment of the population.

As you can see, there is reason to be concerned about the impact of gambling on today's youth. It should not surprise anyone that the growth of Internet gambling presents a whole new list of poten-

tial dangers on our college campuses. Internet gambling provides college students with the opportunity to place wagers on professional and college sporting events from the privacy of their campus residence. Internet gambling offers students virtual anonymity. With nothing more than a credit card, the possibility exists for a student-athlete to place a wager via the Internet and then attempt to influence the outcome of the contest while participating on the court or playing field.

But the very real potential for point-shaving instances is not the only troubling aspect of Internet gambling. If left unchecked, the growth of Internet gambling may be fueled further by college students. After all, who else has greater access to the Internet? Many college students have unlimited use of the Internet, and most residence halls are wired for Internet access.

Furthermore, college students now have the means to place their wagers over the Internet. College campuses are being buried with representatives from credit card companies offering free gifts to students in return for filling out credit card applications. A recent Nellie Mae survey revealed that 65 percent of all college students have at least one credit card, and that 20 percent have 4 or more credit cards, and the average balance on those credit cards is \$2,200.

Another concern for the NCAA and college administrators is that despite confusion among students regarding the legality of Internet gambling, nearly every State has laws that prohibit sports gambling. In my position with the NCAA, I continue to receive questions from students and administrators who received unsolicited E-mails from Internet sports sites. This practice has become so troublesome that legislation has been recently introduced in the Pennsylvania legislature aimed at protecting youth from the onslaught of unsolicited gambling advertisements via the Internet.

My message to our student-athletes who receive these E-mails is simple. Not only would your participation in this activity result in a violation of an NCAA rule, but you would likely be furthering the commission of a State crime. It is especially difficult for students to understand that not everything found on the Internet is legal.

The best way of addressing Internet gambling in this country is for Congress to pass Federal legislation providing for a blanket prohibition of this activity in the United States. Senator Kyl's bill adopts this approach. While 18 offshore Internet gambling operators were recently charged with violating Section 1084 of Title 18 of the United States Code, existing Federal law still needs to be updated.

Section 1084 was enacted in 1961 and targeted sports betting via telephone. Senator Kyl's bill recognizes that the Internet is quickly moving to a wireless environment and will soon move beyond what is covered under section 1084. In addition, the criminal penalties found in Senator Kyl's bill will serve as a strong and much-needed deterrent.

The NCAA recognizes that there is no perfect legislative solution in addressing the issue of Internet gambling. However, Internet gambling is still in its infancy. As the number of online sports betting sites continue to grow abroad, it is essential that the United States send a clear message that there is no longer any uncer-

tainty. With the passage of the Internet Gambling Prohibition Act, it will be a violation of Federal law to accept bets over the Internet from the United States. A Federal prohibition will send a clear and powerful message to an Internet gambling industry that is still in the early stages of development. The NCAA strongly endorses the Internet Gambling Prohibition Act of 1999 and urges members of this subcommittee to move quickly in adopting this legislation.

Thank you.

Senator KYL. Mr. Saum, thank you very much. We were just commenting, excellent presentations by everyone, and yours representing amateur athletics is very, very important.

[The prepared statement of Mr. Saum follows:]

PREPARED STATEMENT OF BILL SAUM

Mr. Chairman and members of the Subcommittee. I am pleased to appear before you today to express the National Collegiate Athletic Association's (NCAA) support for The Internet Gambling Prohibition Act of 1999, introduced by Senator Kyl.

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As you can see, there is reason to be concerned about the impact of gambling on today's youth. It should not surprise anyone that the growth of Internet gambling presents a whole new list of potential dangers on college campuses. Internet gambling provides college students with the opportunity to place wagers on professional and college sporting events from the privacy of their campus residence. Internet gambling offers students virtual anonymity. With nothing more than a credit card, the possibility exists for any student-athlete to place a wager via the Internet and then attempt to influence the outcome of the contest while participating on the court or playing field.

But the very real potential for point shaving incidents is not the only troubling aspect of Internet gambling. If left unchecked, the growth of Internet gambling may be fueled further by college students. After all, who else has greater access to the Internet? Many college students have unlimited use of the Internet and most resi-

dence halls are wired for Internet access. Furthermore, college students now have the means to place wagers over the Internet. College campuses are being deluged with representatives from credit card companies offering free gifts to students in return for filling out credit card applications. A recent Nellie Mae survey revealed that 65 percent of undergraduate students have credit cards, 20 percent have four or more cards.

Another concern for the NCAA and college administrators is that despite confusion among students regarding the legality of Internet gambling, nearly every state has laws that prohibit sports gambling. In my position with the NCAA, I continue to receive questions from students and administrators who receive unsolicited e-mails from Internet sports book sites. This practice has become so troublesome that legislation has been recently introduced in the Pennsylvania legislature aimed at protecting youth from the onslaught of unsolicited gambling advertisements via the Internet. My message to student-athletes who receive these e-mails is simple—not only would your participation in this activity result in a serious NCAA rules violation but you would likely be furthering the commission of a state crime. It is especially difficult for students to understand that not everything found on the Internet is legal.

The best way of addressing Internet gambling in this country is for Congress to pass federal legislation providing for a blanket prohibition of this activity in the United States. Senator Kyl's bill adopts this approach. While 18 off-shore Internet gambling operators were recently charged with violating section 1084 of Title 18 of the U.S. code, existing federal law still needs to be updated. Section 1084 was enacted in 1961 and was targeted at sports betting over telephone lines. Senator Kyl's bill recognizes that the Internet is quickly moving to a wireless environment and will soon move beyond that which is covered under section 1084. In addition, the criminal penalties found in Senator Kyl's bill will serve as a strong and much needed deterrent.

The NCAA recognizes that there is no perfect legislative solution in addressing the issue of Internet gambling. However, Internet gambling is still in its infancy. As the number of on-line sports betting sites continues to grow abroad, it is essential that the United States send a clear message that there is no longer any uncertainty—with the passage of The Internet Gambling Prohibition Act it will be a violation of federal law to accept bets over the Internet from the United States. A federal prohibition will send a clear and powerful message to an Internet gambling industry that is still in the early stages of development.

The NCAA strongly endorses The Internet Gambling Prohibition Act of 1999 and urges members of this Subcommittee to move quickly in adopting this legislation.

Senator KYL. Now, Ms. Marianne McGettigan, counsel—well, I will let you go ahead and introduce yourself in your statement. Thank you for being here.

STATEMENT OF MARIANNE McGETTIGAN

Ms. McGETTIGAN. Thank you, Mr. Chairman. Mr. Chairman, Senator Feinstein, thank you very much for the opportunity to appear here today on behalf of the Major League Baseball Players Association. I do have a complete statement and I would ask that it be included in the record in full.

Senator KYL. All of the statements will be included, and thank you for summarizing.

Ms. McGETTIGAN. Thank you. I am here today to express why it is that the Players Association no longer has any objection to the passage of the Kyl bill. I am glad to be here in this capacity and not—

Senator KYL. I am glad you are here in that capacity.

Ms. McGETTIGAN. Thank you. For the reasons set forth in my testimony, we have no objection to Senator Kyl's most recent draft bill. This change in our position is based on our understanding that, first, this new language applies the sanctions of the bill only to those involved in the business of gambling and not to individual participants.

Second, fantasy sports games and contests that are currently legal in a State will continue to be legal both as a matter of State law and as a matter of Federal law. And, third, to state it another way, because this will be a Federal law, this proposal nonetheless is not intended to make unlawful under Federal law activities that are currently lawful under the law of certain States. In other words, it retains the status quo.

I would also say that if that is a correct understanding, we are confident that the National Football League Players Association and the National Hockey League Players Association will join us in removing our previous objections to the legislation.

Before I briefly state our underpinnings for our objections to the previous bills and the changes in the new proposal that appear to cure those objections, I would like to pose three questions for the record that stem from our reading of the new proposal, and I would hope that at some point in the legislative history there would be some attempt to address these questions, even if just briefly.

The first question is the use of the phrase "otherwise lawful," we presume to be a reference to a specific State. In other words, if the legality of a sports game or contest is determined on a State-by-State basis, we hope that it is not the case that if a fantasy sports game is illegal in only one State, it is therefore illegal under this bill in all other States. We trust that is not the construction that was intended by this phrase.

Second, does the bill require the conclusion that a certain fantasy sports game may be a violation of Federal law in one State where it violates State law, but not a violation of Federal law in another State? In other words, the very same game could be a violation of Federal law in Wisconsin, but not a violation of Federal law in Iowa. That leads to the conclusion that what is the Federal violation is that you have violated State law, not that it is any particular construction of a game.

And, third, is the refusal of the sponsor to permit a participant to claim a prize if the participation is undertaken in a State in which a fantasy game is illegal sufficient to protect the sponsor from prosecution under this law? We trust that the answer to that is yes, and that is partially the basis for the removal of our objections.

Unless anyone has any questions about why we are interested, I will simply state for the record we have two interests. One is that we do license these fantasy sports sites because they are using the identities of players, and we do get some licensing revenue from that activities. But in the course of all the licensing activity we do, it is a very small amount and that is not the principal concern we have with regard to fantasy sports.

Our concern is that these participants represent our most avid fans. They follow the sports page everyday. They are interested in players, whatever team they may be on, and we would hate to see anything that would dampen their enthusiasm for the game.

As a former assistant attorney general for now Senator Gorton, former Attorney General Gorton, I am very understanding of the position of the attorneys general in terms of enforcement. And I must say that one of the problems I have had with this all along

is I viewed the Internet gambling issue as one of a broader class, and that is consumer protection on the Internet.

I think the attorneys general will be coming back at some point saying that they have the same type of problem enforcing their laws in regard to things such as false advertising or ordering groceries on the Net and paying for them with your credit card and then not getting the groceries, or ordering a camera or a computer and not getting the product, or having a problem with the product and not having a warranty that is alleged to be there honored, et cetera.

So I think this is merely a subset of what will be a greater problem, and I think it is worth noting that the reason for this is unlike anything we have ever had in the past. Those who are lawyers in the room remember from first year civil procedure the notion of doing business within a State. Jurisdiction of a State was premised on whether or not the merchant made a purposeful decision to go and do business in a State.

As opposed to what we used to have, it is no longer the merchant that decides to do business in the State; it is the consumer who decides whether the merchant will do business in the State. The consumer, via the Internet, pulls the merchant into a State even if the merchant does not intend to be there. And that is one of the problems you have with enforcement. It is not enough for the merchant to say, I don't want to do business in Wisconsin. If a person in Wisconsin attaches their modem and gets online, they are doing business in Wisconsin whether they want to or not, and that is one of the enforcement problems that will occur.

One of the ways that we think we have been helpful in that with regard to fantasy sports is before these fantasy sports games lawfully can use the likenesses of players and the names of players and their statistics, they must be licensed by the Association. Just like what you heard from New Jersey about what is done in terms of making sure that these are appropriate vendors, we do the same with sites. We make sure that they are reputable sites before we allow them a license to use the likenesses of the players.

If people are playing fantasy games and they understand that, they will avoid sites that do not have the license of the Players Association visible on the page. And they will be assured that if it is visible that they will have certain consumer protections afforded them or that license will be revoked.

And the final thing I wanted to say is that all along, as a matter of public policy, our concern has been why would Congress want to regulate fantasy sports. I heard this quote alleged to have been made by the chairman, and I don't want to—

Senator KYL. The quotation is correct, although it didn't have specific reference to fantasy sports.

Ms. MCGETTIGAN. OK.

Senator KYL. Click the mouse, bet the house.

Ms. MCGETTIGAN. Right.

Senator KYL. I stole that from somebody else and forgot who, but it was a great sound bite.

Ms. MCGETTIGAN. I thought it was an excellent way of summarizing our first concern, and that is that we see two prongs to public policy in this regard. One is that you don't want the participant

playing any game on the Net to potentially lose the house. And I suggest that given the small amounts involved in fantasy sports, I made the comment facetiously in my testimony noting that I thought it was a very good quote that in our case it is click the mouse, bet a lunch. It is that degree. It is not that anyone can ever get online and lose all this money from simply playing fantasy sports.

The second is that there is no threat to the integrity of the game, and I think Mr. Pash would agree with me on this. We agree with the NFL and the other leagues. We do not support gambling that in any way threatens the integrity of professional sports. But we do not think that fantasy sports threatens the integrity of those games. There is no incentive for anyone to attempt to change the outcome of any one game, the performance of any one player. Conversely, there is no incentive for anyone to change their performance over a season or in any particular game. So we don't think there is really any public policy that should be of concern to Congress.

In conclusion, we appreciate the Senators' willingness to work with us and to listen to our concerns and respond to them. We think that it has been done, assuming the answers that we think are known to those three questions are correct, and we would be willing to work with the chairman and members of the subcommittee and the full committee in any way possible in the future.

Thank you very much.

[The prepared statement of Ms. McGettigan follows:]

PREPARED STATEMENT OF MARIANNE MCGETTIGAN

Mr. Chairman, members of the Subcommittee, my name is Marianne McGettigan. I represent the Major League Baseball Players Association (MLBPA). I am here today to address the affect of Senator Kyl's proposed legislation to prohibit Internet gambling on what is commonly referred to as fantasy or rotisserie sports leagues. For reasons I will explain below, unlike the case with previous proposals, the Major League Baseball Players Association has no objection to Senator Kyl's most recent draft bill dealing with Internet gambling. This change in position is based on our understanding that:

- (1) This new language applies the sanctions of the bill only to those involved in the "business of gambling," not to individual participants;
- (2) Fantasy sports games and contests that are currently legal in a state will continue to be legal both as a matter of state law and federal law; and
- (3) Stated another way, because this will be a federal law, this proposal nonetheless is not intended to make unlawful under federal law, activities that are currently lawful under the law of certain states. The proposal retains the *status quo*.

The following testimony, and our support for this proposal, is premised on this understanding. And, if this understanding is correct, we are confident that the National Football Players Association and the National Hockey League Players Association will join us in removing our previous objections to Senator Kyl's legislation.

The MLBPA understands the concerns of Congress with respect to the growth of gambling on the Internet and the frustration of the state attorneys general in attempting to enforce state law when the Internet is involved. The Internet is a truly remarkable medium and we all have much to learn about how best to use it as well as what social ills it may foster. But in attempting to address what some states believe to be a problem, i.e., gambling, the bills that were under consideration by the 105th Congress, S. 474 as reported by this Committee and H.R. 2380, went too far. Both were overly broad and criminalized conduct that should not be criminalized, including fantasy sports leagues, and in the case of S. 474, even some laudable educational contests found on the Internet. The Players Association opposed both those

bills, at least in the form they were introduced, because the bills threatened the existence of many fantasy baseball games or contests on the Internet.

The interest of the Association in fantasy or rotisserie baseball is twofold. First, we currently license eight providers and are in negotiations with others. Although the licensing revenue generated by these games is appreciated, it is only a very modest part of our licensing program and not our principal concern with this legislation. Rather, our second and primary concern is that a prohibition of otherwise lawful fantasy baseball games would be a disservice to many of baseball's most avid fans. We encourage the devotion of these fans to the game and would hate to see that interest threatened, particularly when we see no countervailing public purpose being served.

THE EVOLUTION OF FANTASY SPORTS LEAGUES

Let me briefly explain the evolution of fantasy sports leagues and how they operate on the Internet. As most sports fans know, fantasy sports leagues are not a commercial invention but are instead the product of the ingenuity of fans. Long before the Internet, these fans chose to test their baseball managerial skills by putting together an otherwise nonexistent team, one that played no games, but was nonetheless comprised of active players (at least on paper). The fan would manage this team over the course of a season and have a simulated, but nonetheless somewhat realistic, means by which to measure his or her managerial skill against the others in the fantasy league and against big league managers.¹ The only dreaded aspect of a fantasy baseball league was the statistical one. Because of the need for ongoing and timely statistical analysis, the onerous job of daily and weekly number crunching was routinely rotated among the players in a league.

After these leagues had been in existence for some time, the Internet became available to the general public. Soon web sites began offering to do number crunching for a modest fee, promising greater accuracy, a greater range of information, and also providing the opportunity for individuals who might want to play, but who are not in a position to be part of a league, to join with other individuals through the unique ability of the Internet to link people together from all different locations. In other words, whereas before the Internet, my fantasy sports league might be comprised only of my friends who work inside the beltway, my Internet fantasy sports league may link me with friends from Montana, Canada and the UK, or, if I had no one to play with, the Internet would link me with enough other interested fans (formerly unknown to me) to form a league.

If that were all the Internet web site sponsors provided, however, there would be no need for me to be here today, for all that would be involved would be the purchase of statistical and communications services on the Internet. What has triggered the casting of the gambling net over this harmless hobby of fantasy sports leagues is the provision of a prize by some of these web sites for the participant demonstrating the most skill over the course of the sports season.

The willingness on the part of some individuals and public officials to subject fantasy sports leagues to the same prohibition as on-line casino gambling is, we believe, misplaced. The rationale for prohibiting this hobby has never been explained to us in terms of any principle of public policy that would be served by doing so. To date, the only explanation offered has been that some are willing to label this activity gambling without further review and to conclude that if it is gambling it must be banned. But labels, without more, are not an acceptable basis for making public policy.

FANTASY SPORTS LEAGUES AND PUBLIC POLICY PRINCIPLES

In our view, the government has two principal and legitimate concerns that would justify the prohibition of certain gaming activities in the area of sports. The first is the need to protect those who cannot, or will not, protect themselves from risking more than money, or other valuables than they can afford to, the so-called problem or pathological gamblers. While it is true that playing in a fantasy league takes a considerable investment, it is not one of money, but of time and interest. Over the course of a season the actual monetary investment is *de minimis*. The Chairman has been quoted, accurately or not, on this aspect of public policy. His quote reduces this prong of our public policy discussion to a succinct, easily understood and easily applied concept of governmental concern: "Click the Mouse, Bet the House."

¹It should not surprise the Subcommittee that numerous fantasy sports leagues have been developed and sustained by staff members on Capitol Hill for many years.

Applying this fitting shorthand of the policy to fantasy sports, while participants may “Click the Mouse,” they do not “Bet the House.” There are two reasons for this. First, no bet is made in fantasy sports. Rather, consideration is rendered for the statistical services and analysis provided by the sponsoring web site and any prize awarded is done so on the basis of skill, not chance. Second, even if one considers the entry fee and transaction fees to be a bet, which we do not, the amount anted by the participant can be likened more appropriately to “Bet a Lunch,” or at worst a lunch for two. Hardly a danger of the kind or magnitude that has prompted the Subcommittee’s review.

The second legitimate governmental concern is to protect the integrity of the game or contest itself. But, because of the structure of fantasy sports leagues, no individual baseball player’s performance or team’s performance can ever be influenced by the existence of a fantasy sports league. There is absolutely no incentive for any participant to attempt to influence the outcome of a game, or a baseball player’s performance.

If these principles of public policy are reviewed in the context of fantasy or rotisserie sports leagues I believe the Subcommittee will agree with the Players Association that fantasy or rotisserie sports leagues are not within the scope of activity that ought to concern the government. After reviewing the proposal of Senator Kyl for introduction in the 106th Congress, it appears that the Senator has reached the same conclusion.

SENATOR KYL’S 1999 DRAFT LEGISLATION

As we understand it, both the prior bills and Senator Kyl’s current proposal are attempts to solve the enforcement problem raised by the states attorneys general, namely that certain gambling activities that would be illegal under state law, or under federal law by virtue of 18 USC 1084, are avoiding enforcement because of the use of the Internet. In particular, the borderless nature of the Internet has created significant jurisdictional problems for the state attorneys general.² We have no opposition to the enactment of legislation to facilitate the enforcement of state law for activities, including gambling, that are having an effect within a state’s borders and which are unlawful within that state. The Major League Baseball Players Association does not condone gambling. Sports gambling is a threat to the very sport that employs our members.

But in the past, we have opposed these bills for two reasons. First, the Association does not consider participation in fantasy baseball leagues to be gambling. Some prior bills have cast a net of prohibition too broadly and have, in fact, made illegal some currently legal activity for no apparent public policy reason. For that reason, we have been greatly troubled by the language in prior bills which we thought created a chilling effect on what are today legal Internet fantasy sports leagues in many states in order to assist certain other states in prohibiting online gambling by individuals within their borders. We saw no public policy being served by purposefully, or inadvertently, prohibiting such leagues where they are currently permitted. Indeed, we see no public policy being served by the prohibition of such leagues in those states that currently prohibit fantasy sports leagues. As stated above, participation in fantasy sports leagues neither threatens the fiscal well-being of the participant nor the integrity of any player of the sport or the outcome of any game or series of games. What, therefore, is the good that is served in prohibiting them?

We have reviewed Senator Kyl’s proposed bill for introduction in this Congress. Unlike prior bills, it has been written so as to remove the vagueness and doubt about its application to fantasy sports leagues on the Internet. It neither legalizes games or contests that may be considered to be illegal under the law of some states, nor does it criminalize fantasy games or contests that are otherwise legal. In other words, it appears to preserve the status quo. It creates no omnibus federal law prohibiting fantasy sports leagues, but provides necessary enforcement tools for state attorneys general to enforce the public policy of their states with respect to activities that would otherwise be within their jurisdiction in the normal course, but for this new technology.

²It should be noted that the Internet creates new and untested challenges for merchants as well. Whereas legal concepts involving commerce have always been based on a choice by the merchant of the geographical locations in which to conduct business, that premise is no longer a valid one when the Internet is involved. The customer now controls where business is conducted and the challenge to the merchant is to identify those customers it chooses not to do business with notwithstanding the mobility of computer and the fact that anywhere there is a phone line there is a potential violation of a state law.

That is how it should be. The Internet should not be a safe haven for otherwise unlawful activity. Neither should the use of the Internet alone, make illegal otherwise lawful activity. Based on this reading of Senator Kyl's bill, we have no objection to the legislation and will not oppose it. Having said that, it would be inappropriate for the Association to comment on the other aspects of the bill that may continue to be disputed. But with respect to the interests of the Association, our prior objections have been addressed.

CONCLUSION

The Major League Baseball Players Association is strongly opposed to gambling on sporting events, and we support efforts to protect problem and pathological gamblers. We neither seek nor suggest that any gambling prohibited by current law should be permitted because of the use of the Internet. Although the MLBPA does not believe that participation in fantasy sports leagues—over the Internet or otherwise—constitutes gambling, we understand the resolve and authority of state attorneys general to enforce the laws of their states. Nonetheless we will continue to oppose any effort to criminalize what is currently legal activity in other states.

Senator Kyl's most recent legislative proposal both recognizes our position and clearly addresses it. It preserves the status quo. It neither legalizes activity on the Internet that would be illegal under state law, nor does it make illegal otherwise legal conduct under state law simply because Internet is the medium used.

Moreover, because it applies only to those in the business of gambling it would relieve our fans of the threat of prosecution. This is a very significant point. And, those businesses providing services to our fans, although not in the business of gambling as far as we are concerned, can nonetheless protect themselves, as many already do, by prohibiting participants from being eligible for a prize in those states which consider such games to be illegal gambling. If we understand this construction correctly, we have no objection to this legislation and support it insofar as it protects the integrity of the game of baseball and the performances of baseball players, while preserving the rights of fans to continue a popular hobby in these states which now permit it.

We greatly appreciate the Chairman's willingness to listen to our concerns and address them in his current proposal and thank him for the opportunity to present our views to the Subcommittee.

Senator KYL. I appreciate the testimony of all three of you. I would note this was last week's USA Today, March 12 through 14, headline—and, of course, it has to do with the NCAA tournament—"Basketball? You Bet. Gambling Finds a Home on the Web." It is all about how there is a ton of money being bet. I think the story says 2.5 million people are estimated to be playing NCAA tournament pools online this year. More than \$300 million was bet on sports online last year, and the article goes on to discuss that, which of course illustrates the increasing nature of the concern that amateur sports has and which, of course, affects professional sports as well, and the players that are involved as well.

So it seems to me that this is a very contemporary problem. It is not one that is hypothetical. It is very real and it is the reason for our attempt to ensure that what Congress decided back in 1961 when it passed the Wire and Telephone Act is still good policy today in the year 1999, but needs to be brought up to date because of the fact that it is now fiber optic cable and microwave transmission that are largely accounting for the transmission of this data.

First of all, I think we can answer the questions, Ms. McGettigan, for the record. Obviously, for example, it is certainly the case that you would have to have prize consideration and chance for gambling. Well, if there is no prize, then there can't be gambling. At least that is the way I look at it, and that is the way I think any State attorney general would look at it.

Clearly, if it is illegal in a State and there is no prize offered, then I see absolutely no reason why anyone would contend that it is gambling. But we will make sure we are in accord with respect to all three, but your understanding is correct as far as I am concerned that we are not attempting to make illegal by this legislation fantasy sports activity that would be legal in States.

And so I am pleased that previous opposition has been removed, and would also like to insert into the record a couple letters that we have. And there will be others that we will get as well from other entities that have expressed support. I will not read the entire letter, but from James Hickey, a March 22 letter, "The American Horse Council is pleased to support your Internet Gambling Prohibition Act of 1999," and will continue to work with us to support the bill and work for its enactment.

On March 23, the Commercial Internet Exchange Association, including US West, America Online, and U.S. Telephone Association, expressed their appreciation for the approach that we have taken to working with them to resolve the issues that they had. And based on that experience, they are confident that the remaining service provider liability issues will be resolved. Those are the issues that I referred to earlier with respect to the obligations that we would place on those entities to assist in enforcement of the law, obligations which we in no way want to inhibit them either economically or technically.

[The letters referred to follow:]

March 23, 1999.

Hon. JOHN KYL,
*Chair, Subcommittee on Technology and Terrorism,
Hart Senate Office Building, Washington, DC.*

DEAR SENATOR KYL: We are unable to testify at the March 23rd Subcommittee hearing on your Internet gambling bill. We write, however, to express our appreciation for the cooperative, open approach that you and your staff have taken to revising the service provider liability portions of the bill.

We received the latest draft of your new bill today, and appreciate in the context of this particular issue the basic approach it takes to service provider liability related to illegal Internet gambling.

The technological and practical issues related to the role of service providers in Internet communications are complex, and we very much appreciate the time and effort that you and your staff have already devoted to listening to our concerns and working with us on them. We look forward to continuing to work cooperatively with you and your staff on several refinements before the bill moves forward to Subcommittee mark-up. Based upon our experience working on the bill thus far this year, we are confident that these remaining service provider liability issues will be resolved in a form that merits Senate passage.

Sincerely,

COMMERCIAL INTERNET EXCHANGE
ASSOCIATION,
UNITED STATES TELEPHONE
ASSOCIATION,
AMERICA ONLINE,
USWEST.

PREPARED STATEMENT OF RALPH SIMS ON BEHALF OF THE COMMERCIAL INTERNET
EXCHANGE ASSOCIATION

I. INTRODUCTION

Mr. Chairman and members of the Commission, my name is Ralph Sims. I am pleased to appear before you to testify on behalf of the Commercial Internet ex-

change Association (CIX), which includes over 150 members, as well as the Oregon Internet Service Providers Association and the Washington Association of Internet Service Providers, collectively representing 100 independent Internet service providers serving approximately one million users. Also appearing with me today is Jim Halpert of Piper & Marbury L.L.P., who is counsel to CIX. I am Director of Research and Development for WinStar Broadband Services and have been a provider of Internet services since 1987.

I would like to take a few moments today to offer some information about the difficulties and realities involved in attempting to prevent illegal gambling traffic on the Internet. The associations of which I am a member in no way condone illegal Internet gambling. Their member companies, who are primarily small businesses, take action against customers whom they learn are using their services for such activities. However, there are clearly defined limits to what service providers can do in this regard.

For your information, I attach a memorandum that provides additional detail concerning the technological limitations I will discuss today.

II. BLOCKING ILLEGAL GAMBLING SITES

A. *It is not possible to block illegal traffic*

Many people have the mistaken impression that Internet service providers, or ISPs, act as a traffic officer that can easily block or otherwise control information travelling to or across their networks. They imagine that problems of illegal content on the Internet could be resolved if ISPs assumed the role of traffic cop. This could not be further from the truth. Unless content is stationary and publicly displayed on an ISP's network (for example on a web site), the ISP has virtually no ability to control it. The difficulty lies in the fact that the Internet is highly flexible and dynamic. While this is one of its principal strengths as a communications medium, it is also the primary reason that providing "traffic control" is essentially impossible.

The various computers on the Internet—whether the one that hosts the National Gambling Impact Study Commission's web site, the supercomputers at research facilities, or your laptop—are all assigned numerical addresses when they access the Internet. These numerical addresses are issued to an organization (such as an ISP) for use by those using its services. These addresses are known as Internet Protocol or "IP" addresses, and are the means by which the computers communicate with each other.

While the machines that make the Internet function can handle these numbers quite effectively, people can't. Hence a system was developed to translate or "map" these IP addresses to actual names that can be easily identified by the users of those machines. For instance, a computer's IP address may be 152.163.210.10, but it might be known to users as "www.aol.com." This mapping is part of what is known as Domain Name Service, or DNS. It can be compared to an open global telephone book in which anyone can make changes to any entry with minimal effort and without knowledge from the organizations tasked with maintaining the entries.

Furthermore, a single Internet domain can map to a large number of IP addresses. For example, in reality, www.aol.com has 18 IP addresses that other computers on the Internet recognize. Similarly, a single IP address may map to a large number of Internet domain names.

While a gambling site may be located at one Internet address one day, it can be at another on the next. Simply, put, sites—legal or otherwise—move. And they can move quickly—often within minutes. To use the telephone book analogy further, it's as though you could change your telephone number repeatedly in a single day without the permission, or even the knowledge, of your local telephone company, and the telephone network would automatically send calls to these changing phone numbers so that your friends could continue to reach you.

The techniques to do this are readily available today as commercial products from IBM, F5 Labs, Cisco Systems, and others. They are used by reputable companies to provide extremely high reliability and redundancy in the event access to a particular Internet address—either its IP address or its domain name—is interrupted or severed. For example, IBM's product came out of its method used to keep the web sites of the Atlanta Olympics highly accessible during times of severe network congestion and overload. An illegal gambling site would have no difficulty obtaining and implementing these techniques to evade blocking attempts by Internet service providers.

These techniques—and there are many of them—make it impossible for Internet service providers to block sites effectively. As soon as the blocked site moves to another Internet address, the original filter is no longer useful.

Furthermore, an ISP's blocking efforts would work only for its network. Thus, if an Internet service provider's blocking efforts could somehow overcome these obstacles, they would be effective only on that service provider's network. Unless all ISPs in the United States took the same steps, millions of others users would still have access to the illegal site.

B. Blocking efforts impose unjustifiable costs on lawful users and ISPs

Although blocking is ineffective against sites (such as illegal gambling sites) that expect to be the targets of blocking efforts, it can impose significant costs on lawful users of the network, as well as on Internet providers who might be asked to implement blocks.

First, blocking efforts can prevent users from obtaining access to unsuspecting legitimate sites that share the same IP address or Internet domain with an illegal, blocked site. For example, if one AOL user decided to run an illegal NCAA pool from his personal home page, and all other Internet providers were ordered to block that address, the home pages of nearly a million innocent AOL users would likely also be blocked.

Second, blocking efforts slow down a network for all users. The more blocks an ISP must put in place, the slower the ISP's network. Every time an Internet user requests access to a site, the network must cross-check that site request against the blocked site list. As you can imagine, it would not take very long before the blocked site list gets quite large trying to keep up with the shifting list of addresses that illegal gambling sites will use. Soon, valuable time will be lost on each site selection to process the cross-check—without any assurance that the blocking effort will even be effective. In extreme cases, a very long list of sites to block could cause network failure. As a growing number of users are coming to rely upon the Internet for important business communications—even for telemedicine and other uses connected with human safety—it is very hard to justify reducing the performance of the network in order to engage in the futile task of attempting to block illegal sites.

Finally, programming computers on an ISP's network to implement and update blocks—not to mention the difficult and costly exercise of trying to figure out which Internet domains and IP addresses illegal gambling sites are using—is expensive and time-consuming. These sorts of costs are ordinarily borne by law enforcement, not by commandeering the resources of innocent private parties.

III. GAMBLING MATERIAL POSTED TO ISP'S COMPUTER SERVERS

The possible effective means of preventing illegal gambling on the Internet are:

- (1) Prosecuting those engaged in illegal gambling activities; and
- (2) Obtaining removal of illegal gambling material at its source—the Internet sites and the computer servers at which the illegal gambling material is posted and originates.

It is not possible to prevent third parties from posting such illegal content in the first place. There are a great number of fora on the Internet—including web sites, chatrooms, and newsgroups—where millions of users are able to post material of their choice without editing by the service provider. The only way to stop such postings is almost always to close down these fora completely. For example, AOL alone has tens of thousands of chatrooms and provides its customers with the opportunity to create their own web sites. Furthermore, ISPs that “host” websites (provide computer server space to others who decide what content they want to place on the site), typically host tens of thousands of sites and do not know what content will be or has been placed on the site.

There are over 6,000 ISPs in this country, most of whom are small businesses who compete in a highly competitive market by providing low-cost service with lean staffing. These providers have neither the staff nor the resources to monitor posting that others have made to their computer servers.

However, when ISPs are notified by law enforcement that illegal gambling content has been posted on their servers and of the location of that content, they stand ready to act to remove the content from their servers. Where the illegal content was posted by an ISP's subscriber who turns out to be operating a gambling business, the ISP also can terminate the account of this illegal business. This approach can ensure that illegal gambling content is promptly and effectively removed at its source. At a *minimum*, it should make possible the removal of illegal gambling content from all computer servers in the United States.

IV. CONCLUSION

In conclusion, Mr. Chairman and members of the Commission, Internet service providers are willing to play a constructive role in helping law enforcement address illegal gambling activity. Many ISPs already work with law enforcement and government agencies to prevent other illegal activities over the Internet. However, it is impossible for our industry to stop illegal Internet gambling traffic for the reasons I have outlined. We could not comply with legislation that required a technical solution to prevent illegal gambling, or other illegal activities, on the Internet. We would welcome the opportunity to discuss this dilemma further, and to respond to any questions you may have.

AMERICAN HORSE COUNCIL,
March 22, 1999.

The Hon. JON KYL,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR KYL: The American Horse Council (AHC) is pleased to support your Internet Gambling Prohibition Act of 1999. The AHC includes the major associations of race tracks, breeders groups and horsemen's organizations, which collectively comprise the pari-mutuel horse racing and breeding industry in the U.S.

We commend you for both your initiative in proposing the legislation to address the important social issues presented by Internet gambling and for your willingness to work with the horse industry in addressing our concerns regarding regulation in this area.

The proposed legislation addresses the use of interactive technology with respect to live horse racing in a manner that we believe will advance the goals of the legislation, while taking into account the unique structure of regulation to which our industry is, and has long been, subject to under both State and federal law, particularly the Interstate Horseracing Act of 1978 (15 U.S.C. 1301 et seq.).

We would like to thank you and your staff for reaching out and responding to the concerns raised by this important industry and sport, which has a \$34 billion economic impact on the U.S. economy, supports nearly a half-million jobs and involves more than 700,000 horses. On behalf of the AHC, which represents all segments of this industry, we pledge to support your bill in its present form in its entirety and are committed to working for its enactment in both houses without any material change.

Sincerely,

JAMES J. HICKEY, JR.,
President.

Senator KYL. I would like to ask Senator Feinstein if she would like to begin the questioning.

Senator FEINSTEIN. Well, believe it or not, Mr. Chairman, I have no questions, but really just a comment. I think you are to be commended on this bill. I think this hearing is about as good as it gets in terms of revealing a very substantive block of support for the legislation.

Ms. McGettigan, I think your comments were particularly helpful today because you indicated that one kind of outstanding area had been settled, and that was the fantasy sports area. I think now having the attorneys general, the National Football League, the NCAA, the NFL—I think all of that indicates that there is a very strong bulwark of support.

I think one of the puzzling things to me has been that you can pass something through the U.S. Senate by a 90–10 vote and then all of a sudden it disappears. So we have to be alert. But I think the need is very clear. I think the dilemma here is clear. I think Ms. McGettigan's comments that this essentially doesn't disturb the status quo, that what is legal remains legal in the States, what is illegal remains illegal in the States—this really brings into tune a whole medium in this, and that is the Internet, in a meaningful way.

So I think you are to be congratulated, and I am very happy to be supportive of the effort.

Senator KYL. Thank you, Senator Feinstein. I really appreciate your assistance and help on this as well, and our entire subcommittee. And I think the full committee will be acting on this legislation fairly quickly, as I said before.

The reason, by the way, that this isn't law today, I think, is that our action was taken late enough in the game that when the House Judiciary Committee took it up, they were about to be embarked upon another activity, which some of you remember occurred last fall, and they did not have time to move this bill out of the House, onto the House floor, and to get into conference with us.

There are just a couple of questions. Ms. McGettigan, I might ask you one question and it doesn't really have to do with the legislation because of the way that we have worked out the resolution with respect to fantasy sports. But one of the valid points I think that fantasy sports leagues make is that generally—and as far as I know, totally right now—the leagues are based upon competition over time, over a long enough period of time that it would be very difficult to influence the final result by any particular player's actions.

It is not like fumbling the ball in a key football game or shaving points and underperforming in a basketball game. If you are betting on a season, for example, with a baseball league, it would be very, very difficult for a sports figure to adulterate the purity of the sport.

But one of the questions I have always had is at what point does that become a problem, when you have a week of activity or a month of activity or a couple days of activity, and what will the fantasy sports—and I realize you don't have total control over this, although through licensing you have significant influence over it. What is your idea about how you would prevent that issue from ever arising?

Ms. MCGETTIGAN. I would like to reserve the right to supplement this because you have given me quite a—

Senator KYL. Sure, yes. I know I am hitting you cold with it, but I think it is worth thinking about.

Ms. MCGETTIGAN. It is a great question. When you get down to—as you know, in fantasy sports there are a couple of things at work. First of all, your team doesn't resemble any team that currently exists. So the Yankees may place the Red Sox and as far as my fantasy sports team is concerned, I don't care who wins because it may depend on how someone on the Red Sox performs in that versus someone on the Yankees, and over time. And as you said, what happens when you collapse that time, for instance, to a World Series? Are you going to get a Black Sox scandal?

Given the way this is currently set up—and part of this is I think we need to know more about how the Internet is going to work out. Most of the games we license are ones you would recognize—ESPN, CBS Sports Line, the Sporting News, those types of web sites where you are trying to draw people in and you are also advertising other things, like sporting products, et cetera.

They do offer a prize. At the moment, the prize is so small I cannot imagine anyone seeking to win the trip for two to the World

Series being enough for them to say to David Cone, you know, please don't pitch your best in the sixth game of the World Series.

Senator KYL. But just because you recommend those that are licensed doesn't mean that an unlicensed—that is to say a fantasy sports league that isn't licensed by your organization couldn't operate legally under the definition that we have crafted here.

Ms. MCGETTIGAN. That is correct. What I was saying is I would hope that those who participate would understand the significance of our licensing logo, that that would give them certain protection. But even for unlicensed sites, the way fantasy sports works at the moment, there simply isn't the incentive there as a matter of monetary fact for anyone to change their performance.

And I think you would have to get to a single performance, a single game, and you are essentially saying would there be another Black Sox scandal. And I simply don't see factually a significant incentive there for anyone to change their behavior. As I say, I would like to consider it because I may be voicing it incorrectly. It may be that as a matter of construction, I could better state why it isn't a problem, but I do not believe it is a problem even with a single event.

Senator KYL. Well, I don't mean to put you on the spot. Let's talk about it and maybe we can both clarify our thinking on it so that as the issue continues to evolve, we both have a better understanding of it because when you are having fun doing something like this—and there is no intention on my part to disrupt that—there is always an opportunity for the unscrupulous to enter into it in a way that we don't intend, but which then becomes problematic. And that is all that I had ever been concerned about with respect to this activity when there really is consideration and there really is a prize.

I think there is a question as to the issue of chance and one can interpret that different ways, but that would then begin to submit that activity to regulation. So I think it is important for us to have a clear understanding and that is why I welcome your questions. And we will try to continue to visit, but I think in terms of intentions and goals there is no difference here, and therefore I am confident that the position you have taken can remain not in opposition to our legislation, and hopefully it will even be supportive, given the importance of keeping sports, both professional and amateur pure both from the league and the players' point of view. I know the players have just as much interest in this as the owners do.

Ms. MCGETTIGAN. Senator, could I add a clarifying point? We certainly support the bill insofar as it would preserve the integrity of the game and individual performances. We just got the bill last week. There are, as you know, aspects of the bill—for instance, the Indian issue—that we are not necessarily fully familiar with, and my client at the moment has not had a chance to decide whether or not it is appropriate for us to take a position on that. But certainly for this aspect of the bill and the aspect that would help enforcement on illegal gaming with regard to sports, we are fully supportive.

Senator KYL. Great. Well, I certainly appreciate that. I also support both professional and amateur organizations for their assist-

ance in educating myself and my colleagues. I think that is going to continue to be very important. The fact is that people are focused on a lot of different things and when this legislation comes up, members may not be familiar with it. They may not have focused on it, and it is important for those in the audience who I know are engaged in this and have a view on it to let your Senators know and to let your Representatives know because they are not as familiar with it, obviously, as I am. So I appreciate the efforts that you have undertaken in the past to do that.

There isn't a single Senator that I know that doesn't appreciate sports of some kind, and you represent some of the major organizations here. And I would also note for the record that the other major league organizations, the other major league professional organizations, are also in support, have been in support in the past, and we appreciate their support.

I would state for the record that if there are any questions from any of my colleagues, we will submit those. They can be submitted up until 5 o'clock, Tuesday, March 30, and we will get those questions to all of you. Moreover, if you have any additional statements that you would like to make, feel free to do that.

Unless any of you have anything else to say, since I have lost my audience here and I am fully in accord with what you have to say, I will not ask you any additional questions, but again just thank you all for being here. And I recognize many of you in the audience as strong supporters of the legislation, representing other organizations. I very much appreciate your support and I hope you will continue to work with us on this important legislation.

If there is nothing else to come before the subcommittee, we will stand adjourned.

[Whereupon, at 11:45 a.m., the subcommittee was adjourned.]

